The Solicitors' Journal

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Current Topics.

Multiplicity of Appeals.

In his address at a meeting of the Chartered Institute of Patent Agents last week, Lord Tomlin, after referring specifically to the delay and expense frequently involved in patent actions owing largely to the number of expert witnesses called which necessitates protracted cross-examination, declared that in his opinion the multiplicity of opportunities for appealing permitted by our system was a matter which called for serious consideration. A multiplicity of appeals involves, as he pointed out, not only an undue expenditure of money, but likewise no little uncertainty in the law, two matters which constitute grave defects in an otherwise excellent system. It is true that something has been done in recent years to minimise the number of appeals: for example, appeals from the county court in cases under the Workmen's Compensation Act go direct to the Court of Appeal. This is as it should be, but the generality of cases originating in the county court which are appealed have still to run the gauntlet of the Divisional Court before they can reach the Court of Appeal. All such appeals ought to go direct to the latter tribunal, leaving the Divisional Court free to deal with those cases which, being of a quasi-criminal character, cannot get beyond that court. Lord Tomlin apparently advocates what he terms a two-tier system, meaning thereby a court of first instance and one appellate court. This may involve the elimination of the House of Lords as an appellate tribunal, but such a proposal is no new thing, for it is worth remembering that its abolition was actually embodied in one of the Judicature Acts, although the section effecting it never came into operation. At present, so far from having a two-tier system, we have one under which it is possible to have an appeal to three courts in succession, namely, the Divisional Court, the Court of Appeal and the House of Lords. This affords a persistent litigant rather more latitude than that to which he is reasonably entitled.

Housing and the Working Classes.

The London County Council has given some of the more opulent tenants on one of its estates a "hint" to go, and the Government Committee which has reported on economy in local administration recommends that candidates for council dwellings be subjected to a means test. The Housing Acts of 1925 and 1930, like their predecessors, make frequent and express reference to "the working-classes" when dealing with the duty of local authorities to provide accommodation; but except in the case where members of the working-class are displaced in connection with a scheme, there is no attempt to define the expression. The attempt in question is to be found in Sched. V (*e*) of the 1925 Statute; no exhaustive definition is aimed at, but three groups are included, roughly speaking: people who work and earn wages, people who work but do not earn wages and do not employ others, and *rentiers* whose income does not exceed £3 per week on the average (under the 1903 Act the figure was 30s.).

Class Discrimination in Criminal Law.

Another statute which divides without defining is the Profane Oaths Act, 1745, which, though its preamble suggests that it was a piece of emergency legislation (being aimed at the horrid, impious and execrable vices of profane cursing and swearing . . . which are become so frequent and notorious that, unless speedily and effectually punished they may justly provoke divine vengeance to increase the many calamities these nations now labour under) is still in force, except for a provision which enabled justices to convict without further proof if the offence were committed in their hearing; this was repealed by the Summary Jurisdiction Act, 1884. The penalties imposed are: every day-labourer, common soldier and common seaman, 1s.; every other person under the degree of a gentleman, 2s.; every person of or above the degree of a gentleman, 5s. The Sex Disqualification (Removal) Act, 1919, has not extended this enactment to members of the fair sex, whose language apparently caused the legislators of 1745 no concern. The fines go to the poor of the parish; and there is no reduction for quantities of oaths, even of the same tenor, as one unimaginative member of the middle caste (described as a mealman) who had repeated himself nineteen times, found to his cost, a single conviction with fines totalling £2 being upheld (*R.* v. *Scott*, 33 L.J. M.C. 15). There is, moreover, provision for a fine of 40s. on any constable failing to perform his duty of bringing an offender to justice; these fines do not benefit the poor. Nevertheless, we have never heard of an attempt to enforce this Act, and from the legal standpoint a case stated on the question whether the undefined term "gentleman" had been correctly interpreted might give rise to interesting argument.

A Remarkable Action.

In the Chancery Division on 10th and 11th November, Bennett, J., dealt with an action of quite an unusual nature (*Attorney-General at the relation of the General Medical Council* v. *Barrett Proprietaries Ltd.*), in which the plaintiffs, who are under a statutory obligation to publish from time to time the "British Pharmacopœia," sought to restrain the defendants, a firm of manufacturing chemists, from using the initials "B.P." on preparations made by them, which, admittedly, were not to be found in the "British Pharmacopœia." The defendants had filed a defence, but did not appear or take part in the proceedings. Evidence was given by the President and another member of the General Medical Council and by the President and Secretary of the Pharmaceutical Society to the

effect that the letters "B.P." on a medicine were understood to mean that the medicine was made up in accordance with the "British Pharmacopœia" and that the use of the letters complained of would damage the reputation of the Council and of the "Pharmacopœia" and would mislead the public. But BENNETT, J., after a long argument, dismissed the action, holding that the plaintiffs had not proved that the conduct of the defendants had hindered the General Medical Council in their duty of publishing and keeping up to date the "British Pharmacopœia"; that since the Council did not make or sell drugs, there was nothing connected with the Council likely to be confused with the goods sold by the defendants; that there was no evidence that the public had thought that the defendants' preparations were made in accordance with the directions in the "Pharmacopœia"; that there was no evidence of what the public understood by the letters "B.P.," and that there was no evidence to prove that the defendants had acted fraudulently. Such a termination to an action in which the defendants merely put in a formal denial by way of defence and then stop away is surely very rare!

Help for Discharged Convicts.

THE Annual Report for 1932 of the Central Association for the Aid of Discharged Convicts contains an interesting and encouraging review of the work which is being done by this splendid Association to give to all convicts the chance of making a fresh start after their discharge from prison. We learn that during the year 1931, 567 men were discharged from convict prisons and came under the care of the Association. Of these eighty-eight men were beginners in crime and ranged from men of culture to unskilled labourers. Of these, experience shows that only one in ten offends again, but it is a hard task to re-establish professional men in any sort of employment. Then there were eighty-six men who had just finished their first sentence of penal servitude after previous terms of ordinary imprisonment. Of this class, experience shows that about one half do not get convicted again. They are drawn mainly from the labouring classes and can generally be found work in normal times, though this task at present is exceptionally difficult. The remaining 393 were of the class known as "recidivists," that is to say, persistent criminals. They come mainly from the labouring classes and are very difficult to deal with, as they have not had much experience of regular laborious work, and are difficult to get settled down. Of them about 70 per cent. go back to prison. Of the details of the work that has been done by the Association to aid these various classes of discharged prisoners during the past year, little needs to be said. The report itself sets out in detail how timely help is given and continued as long as it is necessary, particularly where ill-fortune subsequently interrupts the period of honest work. It is easy to realise what a condition of affairs would exist in the country were it not for the beneficent work of this Association (of which the Home Secretary is President) and similar agencies concerned in lifting up the fallen.

Poundbreach.

THE case of *Lavell & Co.* v. *A. & E. O'Leary*, reported in *The Times* of 22nd November, decides a matter which rather surprisingly appears not to have been raised before. The Sale of Distress Act, 1689, provides by s. 3 that "upon any poundbreach or rescous of goods or chattels distrained for rent" treble damages and costs shall be recoverable against the offender. The Distress for Rent Act, 1737, enables persons taking distress for rent "to impound or otherwise secure the distress so made . . .on such part of the premises chargeable with the rent," as may be convenient, and a like remedy for breach is given as was formerly provided in the case of goods impounded in a public pound. In the case in question it was conceded that the fact that a breach is committed unwittingly did not affect the question of liability. Two chief points emerge from MACNAGHTEN, J.'s, decision. First that a firm supplying the means of committing an offence under the Acts above mentioned would be liable notwithstanding that its servants took no part in the actual removal of the goods from the premises. The defendant firm was one of high repute and had acted in perfect good faith. Its employees loaded the goods upon lorries, but did not remove them from the premises. Secondly, although a tenant would not have been in a position to say that the goods had not been impounded, the plaintiff company had, in the circumstances, failed to prove the requisite compliance with the Statute of 1737, so as to attach liability to a stranger. The goods, consisting chiefly of chairs and tables used in a restaurant, had remained just as they were upon the premises, and no step of any kind had been taken to secure them against removal by anybody. The words of the Act: "to impound or otherwise secure," meant securing them against removal not only by the tenant, but also by anyone else. Damages under the Statute of 1689 were not therefore recoverable. In this connection *Jones* v. *Biernstein* 1899] 1 Q.B. 470; [1900] 1 Q.B. 100, where it was held that once goods had been duly impounded, it was not necessary that someone should be left on the premises in possession of the goods, is to be noted. It appeared to CHANNELL, J., to be "quite clear from the authorities that when once the goods are *in custodia regis* the actual retention or possession of the party distraining on them is not necessary." But the decision of the Divisional Court in this case, which was affirmed by the Court of Appeal, proceeds on the assumption that the goods had been duly impounded under the Distress for Rent Act, 1737, and therefore throw no further light on the questions raised in *Lavell & Co.* v. *A. & E. O'Leary*.

Costs of Applications under s. 84 of the L.P.A., 1925.

THERE has hitherto been no power in "the Authority" under s. 84 of the L.P.A., 1925, to award costs to any party, but now under the Administration of Justice Act, 1932, s. 6, costs are in the discretion of the Authority, who may "direct by whom and to whom and in what manner the costs or any part thereof are to be paid, and may either tax the amount of the costs directed to be paid or direct in what manner they are to be taxed." We should have thought that this enactment would more appropriately have appeared in an amendment to the L.P.A. It seems rather inconvenient to have it spatchcocked into an Administration of Justice Act. However, there it is. We do not doubt that the Authority will exercise the discretion so conferred in a proper manner, but we hope that the Authority will see fit in all cases to award costs to objectors only subject to their establishing their right to enforce the restrictive covenants which an applicant seeks to have modified or abrogated. It has so far been the practice of the Authority in awarding compensation to do so only upon such terms, and it seems that it would be proper that the same practice should be followed with regard to costs. It often happens that, where an application is made under the section, a number of persons owning or occupying property in the neighbourhood of the premises affected appear as objectors, although they may have no right at all to enforce the covenants in question. The Authority has no option but to hear all such persons and no power to decide whether they have any right to enforce the covenants. Anyone may appear as an objector and be heard on the footing that he has a right to enforce the covenants. That being so, we should have thought that in giving the Authority power to award costs there would have been inserted a proviso to the effect that costs awarded to an objector should be payable only upon the objector proving his title to enforce the covenants or, at least, that there should be a right of appeal against any order for costs on the ground that the person to whom costs have been awarded has no such title. Further, we do not see how the costs awarded are satisfactorily to be taxed. The Authority has no experience with regard to taxation and no staff

competent to tackle a bill of costs, and there is no express power to refer the taxation to a Taxing Master of the High Court. We venture to think that the section has been hastily drafted and not sufficiently considered in all its bearings. Such is modern legislation!

County Courts and "Breach of Promise" Cases.

By s. 56 of the County Courts Act, 1888, a county court has no jurisdiction to try cases of breach of promise of marriage except possibly, with the parties' consent (*ibid*, s. 64), a prohibition which, it may be noted in passing, extends to an action for the return of articles given during an engagement (*Parsons* v. *Burgess* (1927), 96 L.J., K.B. 787). Adverting to the general prohibition, Judge Crawford described a case recently before him at Edmonton as a "discredit to our legal system." A milk roundsman, whose wages were £3 a week, was stated to owe £123 in connection with a breach of promise case where the damages were assessed at £75 and the plaintiff's High Court costs (which he was ordered to pay) amounted to £53. That court ordered monthly payments of £2. Judge Crawford remarked: "This is one of those cases to which public attention ought to be called. Here are two young people in humble circumstances, and yet they are compelled by the law to take their case to the High Court, where the woman's costs alone amounted to £53." After the remark above quoted, the learned county court judge went on to say that it was most painful to him to deal with such a case. "The young man," he said, "will be saddled with this debt for years and years. Why such cases cannot be brought to courts that are more suitable, I cannot conceive." There is much to be said for, and something against, the desirability of investing county courts with jurisdiction to try cases of this nature, but the fact that it is now within their competence substantially to mitigate the penalty—in the case under review the judge "with extreme regret" made an order for the payment of fifteen shillings a month—robs the contention of some of its force.

Conflicting Legal Maxims.

A correspondent sends the following commenfs on the article which appeared on 10th September, at p. 628 of the current volume: "It has been said that every proverb can be contradicted by another proverb; for example, 'Many hands make light work,' but 'too many cooks spoil the broth.'" It may be that, in the same way, many legal maxims have their counterparts, and it certainly seems that the maxim "*de minimis non curat lex*" may be fairly contrasted with the more obscure, but none the less important, maxim, "*obsta principiis*." The application of this latter maxim is well illustrated by the case of *Nell* v. *Longbottom* [1894] 1 Q.B. 767; 38 Sol. J. 309. In that case it was contended that one of the votes given at a municipal election was bad, inasmuch as, at the time of his election as councillor, the voter held an office or place of profit in the gift of the council and also had a share or interest in a contract or employment with or by the council, contrary to s. 12 (1) (*c*) of the Municipal Corporations Act, 1882. The councillor apparently held the office of chemist to the council, which entitled him to supply goods, in the way of his business as a chemist and druggist, to the police and the fire brigade. The councillor had not resigned this appointment before his election, and had after his election supplied a member of the fire brigade on behalf of the council with four pennyworth of oil. The point was taken that the contract was a very small one. "That, however," said Cave, J., "is a matter into which we cannot enter, as the legislature has not entrusted us with any dispensing power, and probably considered the maxim of *obsta principiis* should apply to cases of this class." The opposite view had been suggested in *Nutton* v. *Wilson* (1889), 22 Q.B.D. 744. The above comments are, of course, not prompted by any desire to belittle the value of your excellent article, but are written merely to call attention to a rather interesting contrast of legal principles."

Criminal Law and Practice.

PERIOD OF REMAND.

As in most matters concerning courts of summary jurisdiction, the provisions as to remand are unnecessarily diverse and complicated.

Section 21 of the Indictable Offences Act, 1848, gives power to remand, if a remand is necessary "from the absence of witnesses, or from any other reasonable cause," for "eight clear days."

Eight "clear" days means ten days, including the day of first appearance, and the day of appearance on remand. In *R.* v. *Herefordshire JJ.* (1820), 3 B. & Ald. 581; 106 E.R. 773, a statute giving a right of appeal required ten clear days' notice of the intention to appeal. "The court were of opinion, that ten clear days meant ten perfect intervening days between the act done and the first day of sessions." See also note (*g*) on p. 34 of the 64th edition of "Stone's Justices' Manual."

The period of eight clear days applies whether the remand be in custody or on bail, for the words in the section providing for bail are "during the period for which he is so remanded"; though Avory, J., in *R.* v. *Garrett: ex parte Dryver* [1918] 1 K.B. 6, at p. 11, expressed an opinion to the contrary. In face of s. 20 (2) of the Criminal Justice Administration Act, 1914, which allows the period of remand on bail to exceed "eight days" with the consent of the person remanded, and of the prosecution, it is difficult to follow why the learned judge thought the period did not as a general rule apply. Incidentally, the amending words of s. 21 are not quite apt; it is necessary to read in the additional words "on bail."

Under s. 21 of the Indictable Offences Act, 1848, there may be a remand "not exceeding three clear days" in police custody.

The Summary Jurisdiction Act, 1848, s. 16, allows adjournment of the hearing of an information or complaint without fixed limit of time. The defendant may be allowed "to go at large," or may be kept in custody, or bailed. It is obvious that no unlimited power of remand is conferred. It must be reasonable in length, otherwise justices would have power, by successive remands or even by one, to detain in prison for life a person charged with a trifling offence, an extreme instance which has only to be stated to make it clear that there must be a limit somewhere.

Years ago justices had the courage to do unreasonable things. It is said that at Skipton Quarter Sessions a countryman who hiccoughed loudly in the face of the court, and explained his lapse as being due to "pears," sat in gaol for three months till the next sessions, but it is not wise nowadays to carry irregularities to extremes.

Under s. 36 of the Metropolitan Police Courts Act, 1839, a Metropolitan magistrate "may remand any person for further examination" either in custody or on bail, without limit of time, and this applies both to summary and indictable offences, *R.* v. *Garrett*, *supra*. In that case the remand was on bail for six weeks, but the absence of limit is as applicable to a remand in custody as to one on bail.

By s. 24 of the Summary Jurisdiction Act, 1879, a person charged with an indictable offence may be remanded for more than eight days if the remand be to "the next practicable sitting of a petty sessional court," for the purpose of ascertaining whether it is expedient to deal with the case summarily.

Section 20 (1) of the Criminal Justice Administration Act, 1914, gives power further to remand in his absence a person who is "by reason of illness or accident unable at the expiration of the period for which he was remanded to appear personally before the court," "for such time as may be deemed reasonable." The only limit here is the reasonableness of the period.

Section 19 of the same Act provides for continuous bail, but this does not affect the length of each remand.

Negligence.

LAST OPPORTUNITY.

THE defence of contributory negligence in "running down" cases often proves troublesome. This is due not so much to any uncertainty of the legal principles involved as to the difficulty of explaining satisfactorily those principles to a jury. "The whole law of negligence in accident cases is now very well settled, and, beyond the difficulty of explaining it to a jury in terms of the decided cases, its application is plain enough": per Lord Sumner in *British Columbia Electric Railway Co. Ltd.* v. *Loach* [1916] A.C. 719, at p. 727.

Two cases, which have recently come before the House of Lords, illustrate the difficulty of this class of litigation, and the decisions in them should assist those whose duty lies in explaining to juries what they ought to consider in arriving at a verdict. First, however, it would be advisable to summarise the principles applicable to a case where the accident is the result of the combined negligence of the parties.

When this conclusion is reached, it is usually material to enquire which party had the last opportunity of avoiding the accident by reasonable care and diligence, for that party is solely responsible. But a last opportunity which a person would have had were it not for his own prior negligence is equivalent to one which he had in fact: *British Columbia Electric Railway Co. Ltd.* v. *Loach*. This qualification is expressed in the words of Anglin, J., in *Brenner* v. *Toronto Railway Co.*, 13 Ont. L.R. 423, adopted by Lord Sumner in *Loach's Case* at p. 726: "If, notwithstanding the difficulties of the situation, efforts to avoid injury duly made would have been successful, but for some self-created incapacity which rendered such efforts inefficacious, the negligence that produced such a state of disability is not merely part of the inducing causes—a remote cause or a cause merely *sine qua non*—it is, in very truth, the efficient, the proximate, the decisive cause of the incapacity, and therefore of the mischief." In *Loach's Case*, the defendants precluded themselves from taking a last opportunity, which otherwise they would have had, by running an electric car with defective brakes.

The decision in *Loach's Case* appears to commend itself to the House of Lords, for Lord Wright in *McLean* v. *Bell* [1932] W.N. 131 (76 SOL. J. 414), refers to it as illustrating one class of case. Scrutton, L.J., however, in *Cooper* v. *Swadling* [1930] 1 K.B. 403, at p. 410, expressed a doubt whether the courts in this country should follow it.

When the evidence tends to shew that an accident is caused by the combined negligence of the defendant and the plaintiff, there are three possibilities: (1) The defendant may have had the last opportunity; he is then liable (*Davies* v. *Mann* (1842), 10 M. & W. 546, and *Radley* v. *L. & N.W. Railway Co.* (1876), 1 A.C. 754); (2) The plaintiff may have had the last opportunity, in which case he cannot recover (*Butterfield* v. *Forrester* (1809), 11 East 60); (3) The negligence of the parties may have been contemporaneous or so nearly contemporaneous that it is impossible to say that either had the last opportunity, in which case the plaintiff cannot recover (*Admiralty Commissioners* v. *Owners of S.S. Volute* [1922] 1 A.C. 129; see the judgment of Lord Birkenhead, L.C., at p. 136).

It follows that "running down" cases, in which the evidence tends to prove that the accident was caused by the combined negligence of the parties, may be divided into two classes. First, there are those in which the negligence of the parties is sufficiently separated in point of time to allow of the enquiry as to which had the last opportunity; and, secondly, there are those in which the negligence is so nearly contemporaneous as to make this enquiry impossible.

In *Swadling* v. *Cooper* [1931] 1 A.C. 1, the House of Lords was concerned with the adequacy of a direction to the jury in a case within the latter class. There, the defendant, whilst driving a motor car at about thirty miles per hour, along a main road, approached a point where it was intersected by a side road. A motor cyclist emerged from the side road without warning, and a collision occurred in which the cyclist was killed. It was common ground that the defendant applied his brakes at once, but the suggestion was made that he ought to have swerved. The utmost limit of time [and this was admitted in the House of Lords by the plaintiff's counsel] between the moment when the defendant could have become aware of the cyclist's approach and the moment of impact was not more than one second.

At the trial, the judge directed the jury that if they found that the defendant was negligent in such a way as to cause the accident, but that the cyclist was guilty of contributory negligence so that both parties were substantially to blame for the accident, they should find a verdict for the defendant. The question was, whose negligence was it that substantially caused the accident? The jury found, and judgment was entered, for the defendant. The Court of Appeal ordered a new trial on the ground that the judge ought to have directed the jury: "If you think the plaintiff was negligent but that the defendant, after the plaintiff was negligent, by taking reasonable care could have avoided him, such negligence of the plaintiff is not, as a matter of law, negligence which contributes to the accident so as to prevent the plaintiff from recovering": see the judgment of Scrutton, L.J., in *Cooper* v. *Swadling* [1930] 1 K.B. 403, at p. 406. The House of Lords, however, held that in the circumstances this direction following the rule in *Davies* v. *Mann*, was not necessary, and that the judge's direction was adequate.

Lord Hailsham, delivering the judgment of the House of Lords, drew a distinction between the facts in this case and those of *Davies* v. *Mann* and *Butterfield* v. *Forrester*, in which two cases there was a substantial interval of time between the negligence of the parties.

His lordship made two points clear. First, it is only necessary to direct the jury on that part of the law of negligence which is essential to their understanding of the case. He said at p. 10: "In summing up it is essential that the law should be correctly and fully stated: but it is hardly of less importance that it should be stated in simple and plain terms so that a jury unskilled in the niceties of legal phraseology may appreciate the direction which is being given to them. Such direction should be adapted to the special circumstances of the case."

Secondly, where the negligence is so nearly contemporaneous as to render it impossible to say that either party could have had a last opportunity, there is no need to direct the jury as to the rule of last opportunity. He said, at p. 11: ". . . it seems clear that from the moment when the parties became aware of their respective positions there can have been no time for the defendant to do anything to avoid the impact and therefore that the negligence of each party contributed to the accident. In these circumstances it appears to me that the learned judge did sufficiently explain to the jury what on the facts of this case were the considerations to which they had to apply their minds and what was the law applicable to the facts."

McLean v. *Bell*, *supra*, on the other hand, was a case in which the rule of last opportunity was applied. There, the appellant alighted from an east-going tramcar in Glasgow on the north side of the road. She then attempted to cross to the south side. Before doing so, she looked to see whether there was any traffic on the road which might cause danger. She saw none, but when she reached the middle of the south-most tram rails, she was knocked down by a motor car driven by the respondent in a westerly direction. The respondent pleaded (*inter alia*) contributory negligence on the appellant's part in not looking to see whether any traffic was approaching before crossing the road.

Lord Wright, delivering the judgment of the House of Lords, said that, assuming that the jury thought that the pursuer (appellant) was negligent in crossing the street when

she did, there was a further question still for the jury, namely, whether the defender could by the exercise of reasonable care and skill have avoided striking her . . . That aspect of the case had been ignored by the Lord Justice-Clerk, who applied as the only test whether the negligence of the pursuer materially contributed to the accident . . . the jury, in view of the evidence before them, were abundantly entitled to find that the case fell within the class of case illustrated by *British Columbia Electric Railway Co. Ltd.* v. *Loach*, and not within the class of case illustrated by *Swadling* v. *Cooper*.

McLean v. *Bell* does not bring to light any new principle. But it does show that, when the negligence of the parties is not contemporaneous or so nearly contemporaneous as to preclude the possibility of a last reasonable opportunity, care must be taken to direct the jury to consider which party had the last opportunity. It is impossible to lay down any rules for ascertaining when the negligence is sufficiently contemporaneous to bring the case within *Swadling* v. *Cooper*; this question is largely dependent on the peculiar circumstances of the particular case. Some danger, however, lurks in the form of direction approved in *Swadling* v. *Cooper*; its simplicity is attractive and tempting. But *McLean* v. *Bell* indicates that it is only in the clearest of cases that it should be used.

A Persistent Fallacy.

THE strangely prevalent belief that the victim of a crime is a party in the criminal proceedings consequent upon its commission has received a further blow. Yet as long ago as the middle of the last century Blackburn, J., in *Castrique* v. *Imrie* L.R. 4 H.L. 414 (at p. 434), said "A judgment in an English Court is not conclusive as to anything but the point decided and therefore a judgment of conviction on an indictment for forging a bill of exchange, though conclusive as to the prisoner being a convicted felon, is not only not conclusive, but is not even admissible evidence of the forgery in an action on the bill, though the conviction must have proceeded on the ground that the bill was forged." Thus if there are civil proceedings on the matter it is useless to claim that the matter is *res judicata*.

The matter was taken a stage further by the case of *Anderson* v. *Collinson* [1901] 2 K.B. 107. In this case the defendant had successfully appealed to quarter sessions against an affiliation order made against him by the justices on the complaint of the plaintiff's daughter. It was held in an action for damages for the seduction of her daughter that the plaintiff was not estopped by the decision of quarter sessions.

A further illustration of the application of this rule occurred in the case of *Packer* v. *Clayton* in the Divisional Court during the first week of this term. The defendant Clayton had been acquitted at the assizes on a charge of having carnal knowledge of the plaintiff, a girl under the age of sixteen. Later the plaintiff appeared before the justices and asked for an affiliation order against the defendant. The justices heard the evidence but decided that they were bound by the decision at the assizes, and that the matter was *res judicata*. The plaintiff thereupon appealed by way of case stated to the Divisional Court.

The court (Hewart, L.C.J., and Avory and Du Parcq, JJ.) decided that the case must be remitted to the justices for them to hear the evidence and to come to a decision on it regardless of the result of the trial at assizes. The issue of the paternity of the child had never been tried at the assizes, in fact the child was not then born. The case was thus one of *res inter alios acta*, not of *res judicata*. The parties were not the same: in the assize case the plaintiff was merely a witness. The result of an action merely binds the parties and their privies, and the plaintiff in this case was therefore not estopped. Indeed, it might well result in grave injustice if the applicant was estopped by an acquittal at assizes, for such acquittal might have been on the statutory ground that he was twenty-three years old or under. Thus once more is emphasised the fact that in criminal proceedings it is the Crown which is the plaintiff.

This, then, is the law when the proceedings have resulted in an acquittal. It is submitted on the authority of Lord Blackburn (*supra*) that there can be no difference of principle where there has been a conviction. Curiously enough there is no direct authority upon this point in this class of case, though reference was made to it in *Mash* v. *Darley* [1914] 3 K.B. 1226. In this case, again an appeal in proceedings under the Bastardy Act, it was sought to prove the respondent's conviction by the evidence of a man who had been present at the criminal trial. Though it was not then in issue, Phillimore, L.J. (at p. 1236) ventured to question whether in such proceedings a conviction could ever be admissible evidence.

An apparent exception to the rule is afforded by the case of *In the Goods of Crippen* [1911] P. 108 (55 SOL. J. 273). In this case a certified copy of the conviction of Dr. Crippen was accepted by the Probate Division as conclusive evidence that he had murdered his wife. But the exception is only apparent for it must be remembered that a man is not allowed to take advantage of his own wrong, and any advantage he would otherwise take goes to the Crown. As in the probate action, Crippen was claiming to benefit under his wife's will, the parties were in fact the same, Crippen and the King, the issue was the same, i.e., had Crippen murdered his wife? The case then was a true instance of *res judicata*.

Company Law and Practice.

CLVIII.

THE PROSPECTUS.—VI.

AT the close of this column last week, in dealing with s. 37, I stated that the class of persons which was there defined was liable to those who subscribe on the faith of the prospectus for any damage sustained by reason of false statements, subject to certain exceptions. In all these provisions it seems to be the case that one is constantly coming upon fresh exceptions, but that is hardly an excuse for not facing them. I will here deal with these particular ones.

These exceptions again place the onus of proof on the person seeking to be exempted from liability, and fall under four heads. The first three heads can conveniently be dealt with first. A person can escape liability if he proves any of the following—

(*a*) that having consented to become a director, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*b*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(*c*) that after the issue of the prospectus, but before allotment, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

Pausing there a moment we may observe that (*a*) deals with cases where the person has been the victim of some form of mistake or of roguery; and that in that particular case no form of public notice is required to obtain exoneration from liability, though why it should differ in this respect from (*b*) or (*c*) is not easy to see. Presumably in these two latter cases the necessity for the giving of public notice arises because it is considered desirable that the investing public shall be put on its guard and shall have an opportunity of giving the matter more careful consideration than they might otherwise have done. Naturally a public notice of the

nature contemplated would have a distinctly damning effect on the result of the issue then contemplated, and very likely for good cause, but one may be permitted to think that if a person consents to become a director, but withdraws that consent before issue, and is yet named in the prospectus as a director or as having agreed to become a director, there may be some strong grounds for supposing that things are not as satisfactory as they might be. The guinea pig is certainly not such a prominent feature of the city landscape as he used to be (at any rate not in his original guise, though there is some justification for the theory that the principle of evolution has worked somewhat rapidly on the original *genus*, and that he is still present in considerable numbers and an altered state) but there yet may be reasons for naming particular persons in a prospectus as directors.

Now let us take the fourth head of exception; under this a man may escape liability under s. 37 if he can prove that—

(i) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground for believing, and did up to allotment believe, that the statement was true—here one may interpose this observation, that statements made by the vendor to the company, which are not supported by any other evidence to the like effect, do not furnish reasonable grounds for any belief within the meaning of this provision: see *Adams* v. *Thrift* [1915] 2 Ch. 21; and

(ii) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert, it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation—unless it can be proved that he had no reasonable ground for believing that the person making such statement, report or valuation was competent to make it; and

(iii) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

What does the section mean by the word "expert"? If we turn to the end of the section we find that the expression "expert" includes, for the purposes of the section, engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. Is it one's profession that lends authority to one's statements? This seems very much open to question; the test surely is not, to what profession does A belong, but what does A know about the matter in hand? A man may, with respect to an honourable profession, be a barrister, and yet statements made by him as to the law might carry little weight; but his statements may carry great weight if he is known for a sound lawyer, but he does not, and cannot, acquire such a reputation merely by the process of being called to the bar. To a lesser degree, no doubt, these observations apply to the other professions, and though you may say that this is mere quibbling I would reply that the first duty of the legislature is to express itself in clear and appropriate language, and this it has not done in this case.

Another curious instance of the misuse of language is to be found in (ii) above, "it . . . was a correct and fair copy of or extract from the report or valuation." Now the expression "fair copy" surely has only one significance—a clean copy of a document the original of which is dirty or blemished in some way, as, for instance, by erasures or insertions: what other meaning can it possibly have? A copy is a copy, and can hardly be fair or unfair in the sense in which the word "fair" appears to be used in the quotation made above—if it omits or inserts words it is not a copy. An extract may, of course, be fair or otherwise, for by divorcing words from their context all manner of meanings may be put upon them; but with a copy, if it is a copy, there seems to be really no choice.

Perhaps the first observation to be made on the provisions of this section is this, that the section cannot help a person who is complaining of the prospectus unless he proves that he would not have applied for the shares or debentures had he known of the omission, if it be an omission of which he is complaining, or of the untruth, if it be an untruth of which he is complaining. This proposition might appear to be an obvious one, but it has the support of the highest judicial authority: see *Macleay* v. *Tait* [1906] A.C. 24.

This section is not the only method by which a person who desires redress can obtain it—he has also the common law action for deceit, and the remedy by which he can obtain rescission of the contract to take up the shares, and the removal of his name from the register. As to the action for deceit, it is necessary to prove fraud, and for that we must turn to the famous definition in *Derry* v. *Peek* (1889), 14 A.C. 337, —a false statement made knowingly, or without a belief in its truth, or recklessly, not caring whether it be true or false. But neither in the event of the purchaser seeking rescission, nor in the event of his seeking relief under this section, is it necessary to prove fraud: see, for the former type of case, *Lagunas Nitrate Co.* v. *Lagunas Syndicate* [1899] 2 Ch. 392, at p. 423, and for the latter, see *Directors* v. *Wood* [1899] 1 Ch. 393.

A Conveyancer's Diary.

Investments to Answer Annuities.

A question frequently arises with regard to the provision that ought to be made by executors for the payment of an annuity bequeathed by a testator either with or without directions for the setting aside or appropriation of a fund to answer it.

The authorities on the subject do not, I think, meet every case which arises in practice, but the general principles are fairly well established, and I propose this week to draw attention to the leading cases on the subject.

First, let us suppose the very common case where a testator bequeaths an annuity to his widow and does not direct that any sum should be set aside and invested to secure it. In such a case the annuity becomes a charge upon the residue of the estate, and unless an appropriation can be made to meet it the distribution of the residue is held up. Strictly speaking, no doubt, the annuitant is entitled to say that the whole of the residuary estate is charged with the payment of the annuity and therefore cannot be distributed until the annuity ceases to be payable. It has, however, for a long time been recognised by the court that so to delay the distribution of an estate is inconvenient and undesirable, and on that ground there has been laid down a rule that an annuitant is only entitled to be reasonably secured out of the residuary estate.

I do not propose to go into the early authorities, but I may say, in passing, that at one time it was considered that where an annuity such as that which I am now considering was bequeathed, the residuary estate might be distributed, provided that the residuary legatees gave security for the payment of the annuity. Later, the courts did not sanction any distribution, except on the terms of a sufficient fund being actually retained to answer the annuity. That principle is laid down in *Harbin* v. *Masterman* [1896] 1 Ch. 351.

The position of annuitants where there has been no direction to set aside a fund to answer the annuities is well exemplified in *Re Parry, Scott* v. *Leak* (1889), 42 Ch. D. 570.

In that case it was held that where a testator bequeaths legacies and annuities and then gives the residue of his property after payment of his debts, funeral and testamentary expenses, legacies and annuities, the annuitants are not entitled as of right to have the estate converted and a sum

sufficient to answer the annuities invested in such securities as the court would approve for the investment of funds under its control, but they are entitled to have the annuities sufficiently secured, for instance, by a mortgage of real estate of the testator.

It seems, therefore, that in the absence of any express directions by the testator an annuitant must accept any reasonable security that the executors are in a position to offer to answer the annuity, and is not as of right entitled to have a fund raised and invested in trustee investments and appropriated for that purpose.

It often happens, however, that a testator directs his executors to set aside and invest a sum which, at the date of investment, will be sufficient by the resulting income to produce the annuity and to hold the investments in trust to pay the annuity, with power to resort to the capital if necessary.

In such a case the question arises (and in these days it is of some importance) in what securities should the investment be made.

I think that the answer to that question is that, if the executors or trustees are given a discretion, they may exercise it and make the investment in any authorised investment; but if it is left to the court to decide the rule is that the investment must be made in Consols.

It is with regard to the rule upon which the court acts that I particularly wish to draw attention here, because it not infrequently happens that executors or trustees seek the directions of the court on this question of investments to answer annuities, and it is, I think, important to know upon what principle or rule the court acts in such cases.

The leading case is *Prendergast* v. *Lushington* (1846), 5 Hare 171, affirmed *sub nom. Prendergast* v. *Prendergast* (1850), 3 H.L.C. 195.

The facts in that case were that a testator, after making certain specific bequests, proceeded as follows: "I give and bequeath to my trustees hereinafter named so much of my personal estate and effects as at the time of my decease shall produce the clear annual income of £1,500; and I direct that the same shall be selected and appropriated and set apart as soon as conveniently may be after my decease by my said trustees in their uncontrolled discretion upon trust to pay" to his wife the dividends during her life or widowhood, and after her death or second marriage the same was to become part of his residuary estate.

In fact, the whole of the testator's estate was at the date of his death invested in foreign securities, and it was contended that (there being a power to retain investments existing at his death) an appropriation should be made of the then existing foreign securities as distinct from a sale and reinvestment. The trustees refused to exercise their discretion and referred the matter to the court.

It was held by Wigram, V.-C., "that, however the case might have been if the trustees had acted upon their own responsibility, the court would only execute the trusts of the will by directing the sale and investment in Consols of a sufficient part of the trust property to provide the annuity to the widow." That decision was affirmed on appeal to Lord Cottenham, L.C., and again on appeal to the House of Lords.

In the House of Lords, Lord Brougham said: "Here the court can exercise no discretion as to the investment of the property in one stock rather than another. The rule of the court is to invest in the three per cents."

That, of course, was not a case of an annuity, but is so analogous to such a case that I think it must be taken as applying.

That the rule is still followed is shown by *Re Hollins* [1918] 1 Ch. 513.

In that case a testatrix bequeathed to her trustees "such a capital sum as will by the annual income thereof at the time of appropriation or investment produce after deduction of income tax a yearly income of £1,000" upon trust for her niece D on attaining the age of twenty-five, and if she should not attain a vested interest upon trust for other legatees. The estate was insufficient for payment in full of that and other legacies.

It was held by the Court of Appeal that for the purpose of abatement the capital sum required to satisfy the contingent legacy must be ascertained on the basis of an investment in Consols. The Court of Appeal reversed the decision of Astbury, J., who had held that the basis should be an investment in 4 per cent. War Loan, and expressly affirmed and followed the rule laid down in *Prendergast* v. *Prendergast*.

The result, therefore, is that in all cases when it is left to the court to decide as to investments to be set aside to answer an annuity or other payments the court will follow the rule that the investment must be made in Consols.

The effect of an investment to provide for an annuity is not (unless expressly so directed) to free the residuary estate from liability, but enables a distribution to be made. Should the allocated securities prove insufficient the annuitant can follow the residue.

No doubt the object of the Court in adopting the rule to which I have referred is to render it really impossible that the annuitant will ever have to follow the distributed residuary estate, since if Consols fail all else must fail.

Landlord and Tenant Notebook.

In custodia legis.

In cases on the law of distress the expression "*in custodia legis*" (or, as Crompton, J., put it in *Bannister* v. *Hyde* (1860), 2 E. & E. 629, "*in gremio legis*") is frequently used to express what is in effect a suspension of the rights and remedies of individuals. The expression is one of those convenient ones which in certain circumstances prove themselves to be inconvenient. For the conception of custody demands a tangible subject as well as a tangible object; and whatever may be said of its long arm, the law remains an intangible set of principles.

The expression occurs most frequently in poundbreach cases, but, from the newspaper report at present available, does not appear to have been used in the judgment in the recent case of *Lavell & Co., Ltd.* v. *A. & E. O'Leary* (*The Times*, 22nd November, 1932). I do not propose to discuss that case in detail until more complete reports are available, but its effect is that innocent third parties assisting in the removal of goods distrained upon but left on the premises and not secured against removal are not guilty of poundbreach, though if the tenant removed the goods he could not be heard to say that they were not "impounded or otherwise secured." The decision appears, therefore, to provide a striking illustration of the disadvantages attached to the use of an expression which seems to qualify the status of chattels but actually operates to modify the remedies of persons.

The nature of the modifications can be gleaned from a decision of Holt, C.J., *Hallet* v. *Bird* (1697), 1 Ld. Raym. 218, an action for trespass to goods in which the defendant, bailiff of a court which had granted replevin, set up a plea of justification, alleging that the plaintiff "*cepit et imparcavit*" and his, the defendant's, rights were acquired by replevin. It was ruled that the plea was bad, because in order to justify the plaintiff's cause of action must be admitted; "*imparcavit*," so far from giving a right to sue in trespass, amounted to an allegation that the plaintiff had actually divested himself of all possession and property, i.e., by impounding; "*detinuit*" would have been good.

Whether seizure without impounding transfers the goods to the "custody of the law" was discussed in our article: "When is Distress completed," on 9th July last (76 Sol. J. 489). The expression was much used in the cases cited, and

a passage from the judgment of Bayley, J., in one of them, *Swann* v. *Earl of Falmouth* (1828), 8 B. & C. 456: "That [the notice of distress] does not indicate any intention to abandon the distress but to leave the goods on the premises in the custody of the law," was quoted by Bosanquet, J., in *Thomas* v. *Harries* (1840), 1 Man. & Gr. 695 (in which the issue was whether a pound had been constituted), with the following comment: "By the latter words, 'in the custody of the law,' the learned judge must be understood to mean an impounding."

When the effect of being *in custodia legis* comes to be studied, it will be seen that it may enlarge rights as well as limit them in the same person. In *Humphrey* v. *Barns* (1600), Cro. Eliz. 691, Mr. Justice Walmsley, venting the outraged majesty of the law, or at all events of the Court of Common Pleas, indignantly overruled the plea of a defendant in action for debt that someone else had got his execution in first; no inferior court could meddle with his court, in which action had already been brought, so that the suit was *quasi in custodia legis*. But, as the learned judge added, where one is attached by his goods at the common law, if the goods be distrained or impounded, they cannot be attached. The converse position, when a distrainor seeks to seize goods taken in execution, is now usually regulated by the L.T.A., 1709, s. 1, the County Courts Act, 1888, s. 160, giving the landlord a qualified preferential claim for rent and directing the sheriff or bailiff accordingly; but apart from this, a distrainor could not seize goods already seized in execution, for they are *in custodia legis*. But if the officer relinquishes possession, though temporarily, distress can be levied, and no nice questions arise as to the intention to abandon, as in the case of distress: *Blades* v. *Arundale* (1813), 1 M. & S. 711. As regards bankruptcy, in *Sacker* v. *Chidley* (1865), 13 W.R. 690, it was held that a distress levied before adjudication had taken the goods out of the "possession, order or disposition" of the bankrupt, and that the plaintiff, to whom they had been assigned in settlement of a debt before the levy, had, thanks to the distress, a good title!

As regards the limitation of the distrainor's rights, *Smith* v. *Wright* (1861), 6 H. & N. 821, shows that if he uses what is *in custodia legis*, the owner may resume possession without committing poundbreach; the principle was first applied in *Bagshawe* v. *Goward* (1607), Cro. Jac. 147, when the King's bailiff of the Manor of East Langton was sued for riding and drawing with a gelding seized as an estray, and unsuccessfully claimed the right to use, as opposed to abuse, for "there was no difference between this case and the case of a distress: 'he hath it by authority in law, wherefore he is punishable for the abuse by trespass as a trespasser *ab initio*.'"

Our County Court Letter.

INSANITY AND WORKMEN'S COMPENSATION.

The above subject has been considered in two recent cases, in special reference to insomnia. In *Naylor* v. *Frodingham Iron and Steel Company Limited*, at Scunthorpe County Court, an award was claimed by the widow of a blast furnace foreman. The deceased was aged about fifty years, and had been splashed by hot metal in one eye on the 17th February. This necessitated the removal of the eye and also absence from work until the 5th April, but, four days after his return to work, the deceased was found hanging. The applicant's case was that the deceased had suffered from insomnia, and an ophthalmic surgeon and a consultant considered that he was mentally deranged as a result of the accident. On the other hand, a professor of medicine (having heard the evidence) found no trace of mental disease, so that a reasonable hypothesis was that the suicide was deliberate. In a reserved judgment (delivered at Brigg) His Honour Judge Langman observed that it was necessary to show that (1) death was due to insanity; (2) that insanity resulted from the accident or consequent shock. There was no evidence, however, that the deceased had lost his moral courage through the accident, and there was no inference that the accident caused insanity, or even that the deceased was insane at the time of the suicide. Judgment was therefore given for the respondents, with costs.

In *Onions* v. *Coalbrookdale Iron Company Limited*, at Madeley County Court, an award was claimed by the widow of a moulder. The deceased was aged about fifty-three years, and had been hit by the falling parts of a moulding box, whereby he incurred internal injuries on the 21st March. He received compensation until the 25th June, when he was found dead with a gas tube in his mouth. The applicant's case was that the deceased had complained of pains in the head after (but never before) the accident, and the medical evidence was that his mind was unhinged through insomnia. The respondents called no medical evidence, but their foreman tated that the deceased was normal the day before his deaths and was contemplating returning to work—his situation being still open. His Honour Deputy Judge W. H. Williams held that there was no evidence of insanity, and judgment was therefore given for the respondents, who did not ask for costs. Compare *Bradshaw* v. *Bickerstaffe Collieries Limited* (1931), 24 B.W.C.C. 451, distinguishing *Dixon* v. *Sutton Heath and Lea Green Colliery Ltd.* (*No.* 2) (1930), 23 B.W.C.C. 135, in which a causal connection between the accident and the suicide was established. The test appears to be—has the insomnia set up such mental derangement that the will power is unable to resist a suicidal impulse?

EXECUTORS' LIABILITY FOR NURSING EXPENSES.

In *Copping* v. *J. and R. Southern*, recently heard at Louth County Court, the claim was for £19 2s. as money expended by the plaintiff in the household of her sister Emma, who (being eighty-five and crippled with gout) had asked the plaintiff to look after her. The sister Emma had the income for life of the estate of another sister (Fanny) who died in December, 1930, haivng appointed the defendants (her nephews) as executors and trustees. The defendants denied having arranged for the plaintiff to stay with their aunt, and His Honour Judge Langman held that the defendants were not personally liable, although they might be liable as executors or the surviving sister might herself be liable to the plaintiff, who was entitled to recover from somebody the amount expended. Judgment was therefore given for the defendants, with costs. For a prior reference, see our issue of the 27th September, 1930 (74 Sol. J. 640).

THE EASEMENT OF LIGHT.

In *Hancox* v. *Field*, recently heard at Hereford County Court, the plaintiff claimed £2 10s. as damages, and also an injunction against the obstruction of a pantry window, against which the defendant had erected a corrugated iron structure in June, 1932. The plaintiff's case was that (1) he had lived in his house since 1907, and had bought it in 1910; (2) the window was therefore an ancient light, and (although alterations were made in 1921) the new window was of the same size, and in the same place, as the old one. Corroborative evidence was given by six witnesses, but the defendant's case was that (*a*) he had lived in his house since 1912, and had bought it in 1918; (*b*) the ancient light was in the cider-mill, and not in the pantry; (*c*) the latter had had no window until 1921, when the present old frame was moved from a shutter hole in the front of the house. Eleven witnesses gave corroborative evidence, including a solicitor, to whom the plaintiff had stated that the disputed window was put in ten years ago. It was contended for the plaintiff that an earlier window had existed in the same position, but His Honour Judge Roope Reeve, K.C., gave judgment for the defendant, with costs. The cases on this subject have recently been reviewed in *Smith* v. *Evangelisation Society Incorporated Trust* [1932] W.N. 224; 76 Sol. J. 815.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

When Mr. Justice Noel died on the 8th December, 1762, there lay behind him forty years of solid, if rather stodgy, professional success. Called to the Bar in 1721, he became next year Recorder of Stamford and its Member of Parliament. He took silk in 1738, and was again sent to the House of Commons in 1747 and 1754 by West Looe; 1749 saw him Chief Justice of Chester and 1757 a Justice of the Common Pleas. His sole claim to distinction seems to have been that his ancestors came over with the Conqueror, for he shone neither in the forum, at the Bar, nor on the Bench. "A pompous man of little solidity," was the verdict of Horace Walpole.

ELOQUENCE THAT WAS.

"Juries are no longer influenced by invective, but by argument," the Recorder of London remarked recently, and though one may legitimately doubt the severely unemotional character of the modern juror, there is no mistaking the improved quality of the addresses offered to him. A present-day advocate would hardly warn his hearers not to be carried away "by the dark oblivion of a brow," and, when reminded that he was talking nonsense, reply that it was "good enough for the jury." To my mind, the prize-winning example of old-style bombast fell from the lips of the eloquent gentleman who reached the climax of an impassioned address with the words: "Gentlemen of the jury, it will be for you to say whether the defendant shall be allowed to come into this court with unblushing footsteps, with the cloak of hypocrisy in his mouth, and draw three bullocks out of my client's pocket with impunity." Of the same quality and reaching almost as fine a complexity of metaphor was Serjeant Vaughan's reference to a witness on the other side, "And then we come to Brown," he said. "Ah! there the impudent and deceitful fellow stands, just like a crocodile, with tears in his eyes and his hands in his breeches pockets."

A MATTER OF TERMS.

Referring to the loose drafting of our statutes, Lord Justice Bowen once said that "it has come to this, that if the legislature were to pass an Act relating to dairy farming and were to lay down certain rules for the management of cows, a clause would be wisely inserted at the end thoughtfully stating that 'for the purposes of this Act "cows" should be meant to include horses.'" Yet even this result seems less curious than the recent decision of the French Council of State which, arguing that any worker who exploits nature is an agriculturist, classes mussels, oysters, snails, and trout as "agricultural produce," but whether fruit or vegetable is not decided. By analogy, this judgment seems to confirm a decision at the Exeter Assizes, in 1872, when, after lengthy argument, a lobster was held not to be an animal "feræ naturæ."

DRAMATIC CRITICISM.

The foreshadowed production of Byron's "Cain" in London during December does not seem to have materialised. This is a pity, if only because it would be interesting to see what so profoundly shocked England a century ago that the Court of Chancery, in the person of Lord Eldon, refused to protect the copyright on the ground that it was "intended to vilify and bring into discredit that portion of scripture history to which it relates." The usually procrastinating Chancellor made up his mind in no time that there was here no parallel with "Paradise Lost," remarking that "in the course of last long vacation, amongst the *solicitæ jucunda oblivia vitæ*, I read that work from beginning to end." (What modern judge would have that much literary stamina?) So the poet failed and all because, as he said, he could not "make Lucifer talk like the Bishop of London."

Reviews.

Studies in the History of the Admiralty and Prize Courts. By E. S. ROSCOE, Registrar of the Admiralty and Prize Courts. 1932. Demy 8vo. pp. vii and (with Index) 84. London: Stevens & Sons, Ltd. 5s. net.

This little book contains ten essays (or studies as the learned author, whose death is so generally regretted, calls them), some of which have appeared before. They are short—a merit not common in writings on legal subjects—and one or two of them are very interesting; in particular the study of Sir Samuel Evans. It is clear that in writing this study the author was writing about a personality with which he had been in intimate contact, and for which he had a very great admiration. In itself this essay stands as a tribute to a very great advocate and judge and for this essay alone the book is worth reading. Another essay—the first one in the collection—captures and retains for us a picture of the final stages in the High Court of Admiralty during its sojourn at Westminster—a picture which we are fortunate to possess as there cannot be many still with us who can recall what took place in that old court.

Leading Cases on Mercantile Law. By R. S. T. CHORLEY, M.A., of the Inner Temple, Barrister-at-Law, and H. A. TUCKER, LL.B., of the Middle Temple and Oxford Circuit, Barrister-at-Law. 1932. Demy 8vo. pp. xxiii and (with Index) 284. London: Butterworth & Co. (Publishers), Ltd. 9s. net.

This book we can recommend to the student of law, although even the practitioner might do worse than possess it. It is, of course, not unusual to have a book of leading cases nor even one specially written as a companion volume to some well-known text-book, but it is not usual to have one of moderate size dealing exclusively with commercial law with so extensive a statement of facts and extracts from the judgments in the leading cases chosen. The selection of leading cases is always a difficult task, and it seems to have been well done in this case, and the notes, although short, seem to be good and up-to-date. It is, of course, easy to criticise, but one would have liked to see a reference to one or two other cases, e.g., the notes to *Clayton's Case* might very well have included a reference to *Deeley* v. *Lloyds Bank* [1912] A.C. 756, and those to *Ex parte Taylor* (on fraudulent preference in bankruptcy) a reference to *In re Cohen* [1924] 2 Ch. 515, and there are one or two slips in the table of cases. But with these few and very minor blemishes the book is good.

Books Received.

The Law as to Solicitors. By Sir DENNIS HERBERT, K.B.E., M.P., Solicitor and Member of the Council of The Law Society. 1932. Medium 8vo. pp. xxii and (with Index) 322. London: Eyre & Spottiswoode (Publishers), Ltd. 25s. net.

The Parliament-House Book for 1932-33. One hundred and eighth publication. 1932. Crown 8vo. Edinburgh: W. Green & Son, Ltd. 21s. net.

Tax Cases. Vol. XVI, Parts VIII, IX and X. Vol. XVII, Part I. 1932. London: H.M. Stationery Office. Per copy, 1s. net.

The Routine of a Public Issue. By OSWALD M. BROWN, Fellow of the Institute of Chartered Accountants in England and Wales. 1932. Medium 8vo. pp. x and (with Index) 240. Cambridge: W. Heffer & Sons, Ltd. 7s. 6d. net.

A Study of the Deaf in England and Wales, 1930-1932. By Dr. A. EICHHOLZ, C.B.E. 1932. Medium 8vo. pp. iv and 206. London: H.M. Stationery Office. 3s. net.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Income Tax, Sched. A.—Assessment more than the Rent.

Q. 2613. A.B., Ltd., are the owners of shop premises let to C.D. on lease for a term of years at a rental of £900 per annum. The premises have been assessed to income tax, Sched. A, 1931-2, as follows:—

Gross Assessment	£1,120
Repairs allowance	190
Net ..	£930

Although advised to do so, the tenant has not made the necessary appeal against the assessment or against the rating assessment which the Sched. A assessment follows. On the £930 tax for 1931-2 has been paid by the tenant amounting to £232 15s. Out of his next payment of rent he deducted £225, being the tax on £900 rent at 5s. in the £. A.B., Ltd., now contend that this deduction of £225 is too much, inasmuch as they do not get the benefit of the statutory repairs allowance proportionate to the rent. We shall be glad if your opinion as to whether the contention of A.B., Ltd., is correct, and if so, what remedy have they, if any?

A. A.B., Ltd., are wrong in contending that they have any remedy against C.D., who is entitled to deduct tax on the amount of the rent. A.B., Ltd.'s, remedy is to appeal against the assessment (see Income Tax Act, 1918, s. 136). The inspector cannot quote the rating assessment as conclusive, though it may be evidence. Even if the property is within the Metropolis Valuation Act area, the rating assessment is not conclusive for income tax on years after 6th April, 1931: Finance Act, 1930, s. 36.

Right to Quarry for Sand and Gravel.

Q. 2614. The case of *Waring* v. *Foden* was heard at the Court of Appeal and reported in the *Estates Gazette* 21st November, 1931. The purport of this case was that land was sold to a purchaser reserving the mines, minerals and mineral substances within or under the property to the vendor. The purchaser commenced to quarry for sand and gravel and the vendor commenced the action against him to restrain him from doing so, and the Court of Appeal upheld the purchaser. We are acting for a tenant of enfranchised copyhold land and the tenant requires to purchase the mineral rights from the lord. The lord's valuers have assessed the mineral rights at a very excessive figure, and we shall be glad if you will let us have your valuable opinion—

(1) As to whether, in view of the aforesaid case, the lord can claim the gravel and sand under the land, bearing in mind cl. 5 of the 12th Sched. of L.P.A., 1922?

(2) Whether the tenant can go to arbitration on the value of the mines and minerals if the lord of the manor will not reduce his figures?

A. (1) The case quoted has no bearing on the lord's rights in copyhold lands. The opinion is given that, unless a custom can be shown to exist in the particular manor for copyhold tenants to work gravel and sand pits for their own profit without licence, the right to such mineral substances is reserved to the lord (see *Dearden* v. *Evans*, 8 L.J. Ex. 171).

(2) Compensation for mines and minerals can only be determined by agreement, though presumably an agreement to accept the decision of an agreed valuer would not be contrary to the Act (see s. 138 (12), proviso).

Landlord and Tenant—Notice to execute Repairs—Solicitor's Costs and Surveyor's Fees.

Q. 2615. The client is lessee under a usual form of lease and has been served with notice demanding certain repairs to be done in accordance with the lessee's covenants. Pending the lessee satisfying the landlord that these repairs have been done, the landlord has demanded payment of the legal costs of the notices being prepared and served on the tenant. On the principle that the lessee is not liable for the landlord's surveyor's fees (if no cause of action for re-entry arises), could it not be argued that the lessee is therefore not liable for the legal costs of the notice either, and that the landlord must pay these? I should be glad if you could quote any authority.

A. It is assumed that the lease does not contain any special covenant to pay costs or expenses. Section 146 (1) of L.P.A., 1925, is a re-enactment of s. 14 (1) of C.A., 1881, and under the latter section it was held by the Court of Appeal in *Skinners Co.* v. *Knight* [1891] 2 Q.B. 542, that solicitor's costs and surveyor's expenses were not included in the word "compensation." This led to the passing of s. 2 (1) of C.A., 1892, reproduced in s. 146 (3) of L.P.A., 1925. The question as to recovery of solicitor's costs and surveyor's fees under this provision arose in *Nind* v. *Nineteenth Century Building Society* [1894] 2 Q.B. 226, where, however, a decision on the point was not necessary to the determination of the case. Davey, L.J., however, in a judgment with which Esher, M.R., concurred, expressed the view that, if the notice was complied with, the sub-section had no application, whilst Smith, L.J., expressly refrained from giving an opinion. The opinion is given that solicitor's costs and surveyor's fees stand on the same footing, and that unless the landlord can bring himself within sub-s. (3) he cannot recover either of them.

Land Value Tax—Production of Instrument—Manner of.

Q. 2616. In September, 1931, a conveyance was lodged at a provincial post office with the proper amount of stamp duty for stamping. No particulars under s. 28 of the Finance Act, 1931, were sent and the conveyance was returned duly stamped, but not with a P.D. stamp. In view of sub-s. (*c*) of s. 1 of the 2nd Sched. to the Act, it appears that this is in order, except that the P.D. stamp should be marked under sub-s. (4) of s. 28. It is understood that in many cases where a document has been forwarded without particulars it has been returned without any stamp at all. If in the present case it can be said that this document has not been "produced" in accordance with s. 28 (1), a penalty has been incurred. Will you please, therefore, say whether in your opinion:—

(*a*) Lodging a document for stamping in the usual way is sufficient production?

(*b*) If not, what is sufficient production having regard to sub-s. (1) of the 2nd Sched.?

(*c*) Whether the Commissioners, on being informed of the facts, would stamp the conveyance with the P.D. stamp without further formality?

It appears that in any event the option under sub-s. (*c*) s. 1, of the 2nd Sched., is stultified by the action of the Commissioners in returning documents unstamped unless they are accompanied by particulars. The notice printed on the Official L.V.A. Forms tends rather to mislead one into supposition that the simple lodging of a document without particulars should result in the party being deemed to have

elected to proceed under sub-s. (*c*) of s. 1 of the 2nd Sched., and that the Commissioners should stamp the document without further question.

A. (*a*) Yes, the Official Circular of August, 1931, on s. 28 of the Finance Act, 1931, expressly states that "Instruments will be accepted at any head or branch post office . . . for transmission to an Inland Revenue stamp office." It does not appear necessary to make any express statement that the instrument is lodged for stamping *ad valorem* and in connection with the land value tax.

(*b*) *Cadit quæstio.*

(*c*) We think so, if the conveyance contained the particulars mentioned in sub-paras. (iv) and (v) of para. 1 (*a*) of the 2nd Sched. to the Act.

Secret Trust—Advancement—Rebuttal.

Q. 2617. In 1925 A.B. conveyed freehold property to C.D., the son of E.D., who provided the purchase money. As between the son and his father there was an understanding that the former should hold the property on behalf of his father, who has in fact received the rents of the property since the conveyance. Apparently under the operation of Pt. II of the 1st Sched. to L.P.A., 1925, the legal estate in the property became vested in the father on 1st January, 1926. The father desires the property to be transferred into his name, and the son is willing.

(1) Is it necessary for the son to convey the property to his father, or to execute some deed of confirmation? It is suggested in the supplement to the Encyclopædia of Forms and Precedents, *sub nomine* "Confirmations," that a deed of confirmation would appear to be unnecessary, and a statutory declaration by the trustee would alone be required.

(2) In the event, however, of a sale of the property by the father, would a statutory declaration be sufficient evidence of his right to execute a conveyance to the purchaser without the concurrence of the nominee?

(3) If a deed of confirmation or conveyance is necessary, kindly refer me to a suitable precedent.

(4) If a conveyance or deed of confirmation is advised, will a 10s. stamp be sufficient?

(5) If a conveyance is necessary, will the certificate as to value be applicable? The purchase money paid in 1925 was £510, but the property has now been valued by a valuer at £500.

A. (1) We think that the statutory declaration is all that is necessary.

(2) Yes. The declaration will rebut the presumption of advancement.

(3) (4) and (5) *Cadunt quæstiones.*

We would observe that, as there was no advancement, the father already has the legal estate. It is only necessary for him to establish the trust of the property in his son's hands. Personally (though possibly illogically) the writer would prefer to have a deed of confirmation reciting the facts and conveying and confirming to the father. A deed stamp would be all that is necessary. We cannot quote a precedent. The position under the amendment to L.P.A., 1925, Sched. I, Pt. II, para. 3, made by L.P. (Amend.) A., 1926, Sched., is not wholly satisfactory, in that two persons are able to make title to a purchaser, the father on production of the declaration of the son, and the son by the suppression of the declaration.

Option to Purchase.

Q. 2618. A by his will, made in 1920, appointed B and C his trustees. He directed his trustees to give B the option of purchasing the leasehold premises then occupied by him at the price of £1,500. The deceased had purchased these premises in 1913 for £600 for a term of years expiring in 1966 at an annual rent of £20. In 1926 the deceased purchased the freehold reversion for £600. He died in 1932. The property is now worth about £2,250 as freehold. B desires to exercise the option of purchasing the freehold at £1,500. The other trustee refuses to sell to him at that price, on the ground that the option was only to purchase the leasehold. He is willing to sell him the leasehold at £1,500 or the freehold at £2,250. In the conveyance to the deceased there was a declaration merging the leasehold in the freehold. If B is entitled to purchase the freehold for £1,500 there will not be sufficient assets to meet the pecuniary and specific legacies, but if he pays £2,250 the legatees can receive their legacies in full, but there will be nothing left for the residuary legatees. The case of *Saxton* v. *Saxton*, 13 Ch. D. 359, and other cases, apparently apply to gifts. Does the same principle apply to an option to purchase? It is really a gift. Can B insist on purchasing the freehold for £1,500 or must he pay £2,250?

A. We have not been able to find any direct authority, but we do not think that *Saxton* v. *Saxton* has any bearing on the question. A person to whom an option is given does not take the property as a devisee. There is no presumption, for instance, that under an option to purchase, the person exercising the option is to take the property subject to an existing incumbrance. We are of opinion that B has no right to purchase the freehold for £1,500. Our view is that the option has gone altogether, and that B is in the same position as any other trustee (if he had accepted the trust) in regard to purchasing part of the testator's property. It might be worth while, however, going to the court on the question of his right to purchase at all so as to get a satisfactory title.

Liability for Defective Wallpapering.

Q. 2619. A man was employed by my client to do decorative work to a house. The major part of the work consisted in wallpapering. Some time after the work had been done my client found that the paper was peeling off the walls and consequently she wrote to the decorator requesting him to put the matter right, but he has neglected to do so. I myself have written to him on more than one occasion, requesting him to repair the work, but I have also had no reply to my letters. As the work has been done, although unsatisfactory, I take it that on account of the smallness of the matter it would be worthless to take proceedings for specific performance. I have advised that the decorator should be written to again, giving him a final opportunity to do the work over again, and that he should be informed at the same time that another decorator will be called in to testify to the unsatisfactory condition of the work, and that the second decorator will be requested to do the work and that the first decorator could be sued for the amount of the account for work done by the second man. Will you kindly say whether this advice is sound and if not will you kindly let me know what steps can be taken to force the decorator to make a satisfactory job of the work he did?

A. The remedy of specific performance is not available, as the contract has been completed, and the only remedy is for damages. In any case the court would not decree specific performance of such a contract, as (1) it would be difficult for the court to supervise the execution of its judgment; (2) damages are an adequate remedy. No steps can be taken to force the decorator to make a satisfactory job of the wallpapering, but the advice given is sound, and the proposed letter should be written. After the second decorator has repapered the wall, an action can be brought against the first for the cost. The defence will probably be that the materials and workmanship were good, but that the defects developed owing to the dampness of the wall. It will be difficult to substantiate these allegations (if made) in view of the first decorator's failure to reply to letters or to inspect the condition of the wall. It is apprehended that the first decorator's account is still outstanding, but, if he has been paid, the amount thus thrown away should be added (in the subsequent action) to the price charged by the second decorator.

Obituary.

THE HON. R. HARCOURT, K.C.

The Hon. Richard Harcourt, K.C., died at Welland, Ontario, on Tuesday, the 29th November, at the age of eighty-three. He was educated at Toronto University, and was admitted to the Bar in 1876, taking silk in 1890. Mr. Harcourt entered the Ontario Legislature in 1878, and sat until his retirement in 1908. He was treasurer of the Province from 1888 to 1898, and afterwards Minister of Education until 1905.

MR. E. A. HARLEY.

Mr. Edward Arthur Harley, solicitor, of Bristol, died on Sunday, the 20th November, in his ninety-first year. Mr. Harley, who was educated at Rugby, was admitted a solicitor in 1869 after serving his articles with his father. He joined the Bristol County Court staff in 1867, and was appointed Chief Clerk and Deputy-Registrar the following year. In 1877 he became Registrar with his father, and they held office together until the death of Mr. Harley, senior, in 1888. He was then joined by Mr. C. E. Wright, with whom he continued until 1924, when they both retired.

MR. S. THORNELY.

Mr. Samuel Thornely, retired solicitor, of Helsby, died on Sunday, the 20th November, in a Liverpool nursing home. Mr. Thornely, who belonged to a Cheshire family, served his articles in Liverpool, and was admitted a solicitor in 1890. He was with a London firm of solicitors until 1892, when he was appointed solicitor to the Hampshire County Council. In 1893 he was appointed Deputy Clerk of the Peace for Worcestershire, being appointed Clerk in 1895. He became Clerk to the Peace and to the County Council of West Sussex in 1913, and retired in 1931.

MR. H. SHEFFIELD.

Mr. Herbert Sheffield, solicitor, senior partner in the firm of Messrs. Robinson & Sheffield, of Beverley, Yorks, died on Saturday, the 19th November, at the age of sixty-eight. Mr. Sheffield, who was admitted a solicitor in 1886, was Clerk to the Trustees of Turners' Charity.

MR. R. H. W. DOBELL.

Mr. R. Horace W. Dobell, solicitor, of Truro and Perran porth, died at Hayle on Saturday, the 19th November, at the age of fifty-seven. The eldest son of the late Mr. Robert Dobell, solicitor, and Town Clerk of Truro, he was educated at Truro Grammar School and served his articles in his father's office. He was admitted a solicitor in 1896, and upon his father's death in 1915 he succeeded to the practice. Mr. Dobell had been manager of the Truro Employment Exchange for about twenty years.

Correspondence.

Searches in Bankruptcy by Trustees.

Sir,—With reference to the article on p. 755 of THE SOLICITORS' JOURNAL of the 29th ult., I asked one of my managing clerks what was his practice, and he gave me the enclosed note, which might be useful to other practitioners.

Surrey-street, W.C.2, R. H. BEHREND.
11th November.

The note reads:—

"A rather similar point to this was, I think, raised in 'A Conveyancer's Diary' about two years ago, and since then I have always searched in bankruptcy before paying beneficiaries who were not known to us. I do not think that Conveyancer is fully aware of the procedure on a bankruptcy search. It is, I think, generally accepted that *no* bankruptcy search can ever be conclusive, for the following reason. Bankruptcy is divided into two divisions, "town" and "country." When searching town, one looks at the last six months in the bankruptcy notice book and also for the last twenty years or so in the bankruptcy petition book. Personally, I never touch the receiving order books, because no receiving order can be made without a petition, while a petition can be outstanding without a receiving order being made. Accordingly, in a town bankruptcy, one would find an outstanding bankruptcy notice or petition which would cause the trustee or administrator to withhold payment until the bankruptcy notice or petition had been complied with. On a country search the position is most unsatisfactory. All that can be searched is a list of receiving orders in both town and country up to the date of the last *Gazette*, and the only way to make a proper country search is at one or all of the district registries as the particular registry may not be known, and even then the district registry may not be within reach of a London solicitor on the exact day for payment except by asking the district registry to make the search and telegraph the result. Only in very exceptional circumstances does one make a search in one division without the other."

Sir,—My attention has been called to p. 756 of THE SOLICITORS' JOURNAL, where the writer of "A Conveyancer's Diary" discusses the duties and liabilities of trustees who are distributing their trust fund among the beneficiaries.

The writer states that he has looked at "Lewin on Trusts" and finds no reference to the question he raises, or to *Re Wigzell* [1921] 2 K.B. 835. *Re Wigzell* is not cited in "Lewin on Trusts" because in the view of the editor of the 13th ed. the decision in that case has no bearing upon the duty and liability of trustees, who merely have to attend to all claims of which they have notice.

I am not prepared to enter upon a general discussion of this subject, which is dealt with in "Lewin on Trusts" at considerable length. The view is there expressed that as regards equitable interests the Bankruptcy Act can pass nothing more than the fullest assignment which the bankrupt could have made, and that a trustee in bankruptcy who is an assignee by operation of law cannot in a court of equity be viewed as under a less obligation to give notice than a particular assignee. The title of a trustee in bankruptcy being a derivative one, and not one that appears upon the face of the instrument creating the settlement, the trustees may, having neither express nor constructive notice, pay upon the footing of the original title, and in that case they cannot be made to pay over again to the trustee in bankruptcy under the derivative title. But it would seem that the rule as to notice cannot be applied as against a trustee in bankruptcy where the subject-matter of assignment is a debt which was recoverable *at law* by the bankrupt, since in that case the *legal* title vests in the trustee in bankruptcy.

WALTER BANKS,
Editor of "Lewin on Trusts," 13th ed.

Stone Buildings, W.C.2.
26th November.

OFFICES OF THE COUNTY COURTS.

1. Tuesday, the 27th day of December, 1932, having been proclaimed a special Bank Holiday, the offices of the County Courts may be closed on Thursday, the 29th day of December, 1932, in addition to those days on which they may be closed under the Order of the Lord Chancellor, dated the 3rd day of December, 1897.

2. The offices of the County Courts shall be closed on Monday, the 2nd day of January, 1933, unless in any particular case the Lord Chancellor otherwise directs.

3. Nothing in this Order shall apply to the District Registries of Liverpool, Manchester and Ipswich.

By Order of the Lord Chancellor.
Dated the 23rd day of November, 1932.
(Sgd.) A. E. A. NAPIER,
Assistant Secretary.

Notes of Cases.

House of Lords.

Thomas *v.* Ocean Coal Co. Ltd.

15th November.

WORKMEN'S COMPENSATION—COURSE OF EMPLOYMENT—ADDED PERIL—BREACH OF PROHIBITION—STATUTORY REGULATION—HITCHER CROSSING BOTTOM OF MINE SHAFT—WORKMEN'S COMPENSATION ACT, 1925, s. 1 (2).

The question involved in this appeal was whether the accident while the workman was doing an act for the purposes of and in connection with his employers' trade, but which act contravened a statutory regulation, should be deemed to be an accident arising out of and in the course of his employment. The dead man had been employed as a hitcher at the colliery and his duties included the sending up of full trams to the surface. It was provided, however, by General Regulations 22 that no person except as therein mentioned should cross the shaft bottom. The dead man while in charge of the pit bottom as a hitcher and while crossing from one side to the other was killed by a descending cage. The county court judge held that the workman committed a breach of the prohibition and that he thereby added a very serious peril to his employment. The Court of Appeal affirmed his award, holding that the case was governed by *Stephen* v. *Cooper* [1929] A.C. 570, and was not affected by sub-s. (2) of s. 1 of the Act of 1925.

Lord BUCKMASTER, in giving judgment, said the judge had not held as a matter of fact that the accident did not arise in the course of employment, but he had reasoned himself to that conclusion in the belief that he was so constrained by reason of the authority of *Stephen* v. *Cooper*, *supra*. The judge had held that, having regard to that case he was bound to hold that the adding of the peril placed the workman's act outside the scope of his employment. He, his lordship, did not think he was so bound. He thought the case of *Stephen* v. *Cooper* introduced no new law; it merely followed an earlier decision. If that were so the county court judge was not under the constraint by which he thought he was compelled. In those circumstances it seemed that the accident arose in the course of the employment. The case of *Garallan Coal Co.* v. *Anderson* [1927] A.C. 59, afforded some assistance in reaching that conclusion. The judgment of the Court of Appeal should be reversed and the sum of £300 awarded to the appellant.

Lords BLANESBURGH, WARRINGTON, RUSSELL and WRIGHT agreed.

COUNSEL: *Upjohn*, K.C., *G. K. Jenkins*, K.C. and *Joshua Davies*; *Sir W. Greaves Lord*, K.C., and *Edgar T. Dale*.

SOLICITORS: *Smith, Randell, Dods & Bockett*, for *Morgan, Bruce & Nicholas*, Pontypridd; *Bell, Brodrick & Gray*, for *Arthur J. Prosser*, Cardiff.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

Harper *v.* Haden & Sons, Limited.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ.

13th, 14th and 17th October, 15th November.

HIGHWAY—OBSTRUCTION—NUISANCE—OBSTRUCTION NECESSARY AND REASONABLE—DAMAGE TO OWNER OF NEIGHBOURING PROPERTY—NO CAUSE OF ACTION.

Appeal from a decision of Bennett, J.

For the purpose of adding a storey to their business premises, the defendants erected a scaffolding and hoarding, with a gangway carrying the footway round the hoarding; all necessary licences for these erections having been obtained from the local authority. The plaintiff, owner of an adjoining shop, alleged that the hoarding had obstructed the highway and deflected his possible customers; and he estimated the damage suffered at £150. Bennett, J., basing his judgment on *Lingke* v. *Mayor, etc. of Christchurch* (56 SOL. J. 735); [1912] 3 K.B. 595, gave judgment for that amount. The defendants appealed. The court allowed the appeal.

Lord HANWORTH, M.R., said that many authorities showed that the public must often submit to inconveniences of the sort, as, for instance, in the building or repair of a house, when the work was necessary. There might often be no legal remedy. It was only when the obstruction was unreasonable in itself, or unreasonably prolonged, that a wrongful act was committed and the public had a right to complaint; further the party injured should show a particular injury to himself, as distinct from that suffered by the public at large. *Lingke's Case* (*supra*), was the case of an exceptional and unreasonable impediment; but in the present case Bennett, J., had found on the facts that the obstruction had not offended either in *quantum* or duration. There was, therefore, no cause of action.

COUNSEL: *Spens*, K.C., and *D. Ll. Jenkins*, for the appellants; *Elliot Gorst* and *V. Harrington*, for the respondent.

SOLICITORS: *Cronin & Co.*; *J. H. Milner & Son*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

Hennell *v.* Commissioners of Inland Revenue.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ.

11th November.

REVENUE—STAMP DUTY ON DEEDS—COVENANT TO PAY MONTHLY SUM—ANNUITY—PERIODICAL PAYMENT—STAMP ACT, 1891 (54 & 55 Vict. c. 39), 1st Sched.

Appeal from a decision of Rowlatt, J.

By a deed of covenant dated 31st March, 1931, A covenanted to pay to B during their joint lives "the sum of £21 13s. 4d. (hereinafter referred to as 'the monthly sum') on the first day of every calendar month." The Commissioners of Inland Revenue assessed the transaction to duty under the schedule to the Stamp Act, 1891, and the heading "Bond, Covenant or Instrument of any kind whatsoever," and they held that it came under the first clause of that heading "Security for an annuity." A maintained that the covenant, being for a monthly payment only, was not for an annuity, but for a sum "periodically payable" within the meaning of the schedule as applied to other cases. On appeal Rowlatt, J., thought that he was bound by the decisions in *Clifford* v. *Commissioners of Inland Revenue* [1896] 2 Q.B. 187, and *Jackson* v. *Commissioners of Inland Revenue*, 18 T.L.R. 678, to hold that the payment was not an annuity. He therefore allowed the appeal. The Crown appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., said that the Act of 1891, under which the charge was made, was not easy to construe, but it was an old rule of court that where in a charging Act the meaning of a charge was in doubt it ought to be construed in favour of the subject. That rule had been followed in *Clifford's Case*, *supra*, a case applicable to the present appeal, a case which had often been quoted during the last thirty-five years. In that case Baron Pollock drew the distinction between what were annual payments, although not necessarily paid at exact intervals of a year, and what in the case before him was nothing more than a weekly payment. So in the present case the court had to differentiate between annual payment, although it might actually be paid by appropriate sums quarterly, half-yearly, or at some other interval, and a mere periodic payment in connection with which the words, "annual" or "annuity" were nowhere used. The appeal would be dismissed.

LAWRENCE and ROMER, L.JJ., gave judgments to the same effect.

COUNSEL: *The Solicitor-General* (Sir Boyd Merriman, K.C.), and *J. H. Stamp*, for the Crown; *Cleveland-Stevens*, K.C., and *Milner Holland*, for the respondent.

SOLICITORS: *Solicitor of Customs and Excise; J. C. Fox, Gamble & Son.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re M.I.G. Trust, Limited.

Eve, J. 16th November.

COMPANY—FRAUDULENT PREFERENCE—MORTGAGE—REGISTRATION—SUFFERING JUDICIAL PROCEEDING—BANKRUPTCY ACT, 1914, s. 44—COMPANIES ACT, 1929, s. 265.

This was a summons taken out by the liquidator of the M.I.G. Trust, Ltd., to determine whether the company had committed a fraudulent preference by suffering a judicial proceeding to go by default against it in favour of one of its creditors. The company was formed in 1910 by Sir Arthur Wheeler for the purpose of dealing in stocks, shares and various other kinds of property, and on 6th May, 1930, the M.I.G. Trust deposited with the Gresham Trust, Ltd., the title deeds of three farms valued at £32,000 as part security for a loan. The mortgage was not registered in accordance with s. 79 of the Companies Act, and on 6th March, 1931, the trust applied for leave to extend the time for registration. On the motion coming on on 10th March it appeared that the managing director had written withdrawing opposition. On 31st March, 1931, on the company's own petition presented on 18th March, an order was made for the compulsory winding up of the M.I.G. Trust, Ltd. On those facts the liquidator contended that the company had suffered a judicial proceeding which amounted to a fraudulent preference.

EVE, J., in a considered judgment, said the alleged preference was the election of the company not to oppose the order of 10th March for extension. The trust admitted that it had notice of the company's financial embarrassments and that liquidation was imminent. The liquidator contended that the order would never have been made had the court been informed of the facts, that the company withdrew to prevent the trust from being so informed, and that the trust must be deemed to have had notice by reason of the fact that Wheeler was the only director of the company and was also a director of the trust. He (the liquidator) accepted the view that the omission to register was accidental, but he averred that in the course adopted by the company it suffered a judicial proceeding which was a fraudulent preference. In the absence of any evidence to explain the motive or intent with which the case was withdrawn, he (his lordship) could only conclude that the dominating intent or motive was to prefer the trust. The applicant had established that in suffering judgment to go by default the company did so with a view to giving the trust preference over other creditors, and accordingly he (his lordship) declared that the registration of the charge was void as against the applicant. The costs must be paid by the trust.

COUNSEL: *Millard Tucker*, K.C., and *H. M. Pratt; Jenkins*, K.C., and *A. P. Vanneck.*

SOLICITORS: *Mayo, Elder & Rutherfords; Clifford-Turner, Hopton & Lawrence.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Buckland *v.* The King.

McCardie, J. 8th November.

PETITION OF RIGHT—PARCELS OF CINEMATOGRAPH FILMS—IMPORTED FROM BERLIN—DAY BEFORE IMPOSITION OF DUTY—NOT "BAGGAGE OF PASSENGER"—FORMALITIES NOT COMPLIED WITH—FILMS DETAINED BY CUSTOMS—DUTY PAYABLE—CUSTOMS CONSOLIDATION ACT, 1876 (39 & 40 Vict. c. 36), s. 66—FINANCE ACT, 1925 (15 & 16 Geo. 5, c. 36), s. 3.

By this petition of right the suppliant, Martin Buckland, a producer of cinematograph films and the owner of certain operatic film settings, claimed the return of cinematograph films detained by the Commissioners of Customs and Excise, or their value, and £32,000 damages for their detention. The suppliant complained that on the arrival from Berlin of six parcels containing films at Victoria Station at 9.30 p.m. on the 30th June, 1925 (which was the day before the duty imposed on the importing of cinematograph films came into force under s. 3 of the Finance Act, 1925), they were detained by the customs officials on the ground that a fine was payable for the carriage of the films with the suppliant's personal baggage. The Crown, by a demurrer, contended that, in so far as damages were claimed for detention, the petition of right was bad in substance and in law, no such petition being maintainable which complained of a wrongful or tortious act by servants of the Crown. It was further contended that the films in question were lawfully detained by them, as they had been taken out of the ship in which they were imported without having been duly entered in accordance with the provisions of the Customs Consolidation Act, 1876, and thereby became liable to seizure and forfeiture.

MCCARDIE, J., said that in Berlin the suppliant packed the films in six separate parcels, and they were registered through to Victoria Station. There the customs officer formed the view that the parcels were not ordinary personal luggage or baggage at all, and they were detained on the ground that they were merchandise and required entry in due form under the Customs Consolidation Act, 1876. Next morning the customs officials informed the suppliant that the goods were lawfully detained; that technically they were exposed to forfeiture on the ground that they had not been duly entered; and that they were liable to duty under s. 3 of the Finance Act, 1925. The customs claimed that the duty payable was about £567, and the six parcels were still in their custody. The leading point of the case was whether or not the parcels were the baggage of a passenger within s. 66 of the Customs Act, 1876. Viewing the decisions as a whole, and bearing in mind the facts and circumstances of the present case, he must hold that the six parcels of films were not "baggage of passengers" within the fair meaning of s. 66 of the Customs Consolidation Act. It therefore followed that the Crown were right in their contention, and the Commissioners of Customs were entitled to detain the parcels until the owner had duly entered them under the provisions of the Act and had paid the appropriate duty on them. The petition of right failed.

COUNSEL: *Claude Grundy*, for the suppliant; *the Solicitor-General* (Sir Boyd Merriman, K.C.) and *W. Bowstead*, for the Crown.

SOLICITORS: *Gordon Gardiner, Carpenter & Co.; the Solicitor for Customs and Excise.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

De Parrell *v.* Walker.

Lord Hewart, C.J. 11th November.

NEGLIGENCE—DISHONEST EMPLOYEE—FICTITIOUS REFERENCE—THEFT WHILE ON EMPLOYER'S BUSINESS—LIABILITY OF EMPLOYER.

In this action Mme. Lydie de Parrell claimed from John Walker, a watch and clock maker, damages which she alleged she suffered owing to the loss of jewellery which she said was due to the defendant's negligence. The plaintiff alleged that in February, 1930, the defendant sent a man named Frank Jackson, who was then in his employment and known by the name of Watson, to her house to wind up the clocks, and that while there Jackson stole jewellery to the value of £325. The

plaintiff said that the defendant ought to have known that Jackson was a person of dishonest character and had served various terms of imprisonment. The plaintiff said that the defendant was negligent in having made no sufficient or proper enquiries regarding Jackson's character. The defendant denied that Jackson stole the jewellery, and said that, if he did so, it was on an occasion when he did not visit the house on his (the defendant's) instructions. Alternatively, the defendant denied that he had been guilty of any negligence or breach of duty, and he also pleaded contributory negligence on the part of the plaintiff or her servants.

Lord HEWART, C.J., in giving judgment, said that the defendant had inserted an advertisement in a newspaper, in reply to which a man called on him, giving the name Watson, and saying that he lived with his brother in the Waterloo-road. That statement was untrue. The address was merely an accommodation address for the receipt of letters. Watson also gave as reference "G. F. Williams, jeweller, Farncombe-street, Farncombe, Surrey." The defendant wrote to that address and received a reply which, considered by itself, constituted a good reference. In fact, however, there was no jeweller of the name of G. F. Williams at Farncombe, and the address given there was one of a row of cottages. Any inquiry at Farncombe or in the Waterloo-road would have shown the defendant that he was being imposed upon. The question to be decided was whether, in view of the character of the employment for which Watson was engaged, the defendant had been negligent. He (his lordship) had come to the conclusion that the defendant was negligent. It seemed to him that the case was analogous to *Williams* v. *Curzon Syndicate, Ltd.*, 35 T.L.R. 475. Judgment for the plaintiff for £325 and costs. A stay of execution was granted.

COUNSEL: *Montague Berryman*, for the plaintiff; *Russell Vick*, for the defendant.

SOLICITORS: *Berrymans; Woodbridge & Sons.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.—Part II.

The Law Society.

FINAL EXAMINATION.

The following Candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 31st October and 1st November, 1932:—

Geoffrey Weaver Adams, Max Abraham Adler, Dilys Ainley, Elliot Barnard Allard, John Bryan Allinson, William Haughton Ashworth, Lindsey Middleton Aspland, Harry Ernest Bailey, Henry Eli Baker, B.A., B.C.L. Oxon, LL.B. London, Thomas Myrddin Baker, LL.B. Durham, Frank Norman Ball, LL.B. London, Samuel Bard, John Ewart Baring, Edward Alexander Storey Barnard, Thomas Godfrey Barrows, John Michael Orpen Barstow, B.A. Oxon, John Reinagle Barwell, Eric George Bates, B.A., LL.B. Cantab., Matthew Bates, B.A. Oxon, William Bennett, Norman Benton, Benjamin Berkoff, B.A. Cantab., John Charles Holland Beswick, B.A. Cantab., Guy Stanley Maitland Birch, John Dickinson Bladon, B.A., LL.B. Cantab., George Arthur Blakeley, William Harold Blakesley, Spencer Allen Block, B.A. Cantab., Alfred Blundell, B.A., B.C.L. Oxon, Charles Adrian Boulton, William Victor Bowden, Leonard Goodwin George Breeze, Mervyn Anthony Britton, John Elliott Brooks, Bertram Arthur Brown, Mary Alice Brown, Stanley Ivan Brown, Stephen Humfrey Brown, B.A. Oxon, William Mauleverer Brown, B.A. Cantab., Alaric Humphry Bruce-Mitford, B.A. Oxon, Geoffrey Vernon Bull, LL.B. London, Norman Butters, Bernard Alfred Catton, John Cherry, M.A. Cantab., Walter Denis Stephens Chesters, Nathan Chinn, Allen Lewis Chubb, Basil Hallas Clark, Cyril Clark, Harold Clarke, Henry Clayton, Adam Crichton Cochrane, Frederick Cockroft, B.A. Durham, David Merrick Townsend Coles, Hugh Neville Colpman, Joseph Gregory Buxton Coogan, M.A. Cantab., Gordon Francis Coulton, Vladimir Andrew Victor Cowley, LL.B. London, Lionel Sydney William Cranfield, William Healy Darbyshire, Gerald Wyndham Davey, Henry Arthur Davey, Werner Ralph Davies, Leslie Richard Davis, Marcus Davis, LL.B. Liverpool, Ralph Thomas Davis, Stanley de Leon, LL.B. London, Denis William Dobson, B.A., LL.B. Cantab., Vyvyan Ollive Nicholas Donnithorne, B.A. Oxon, Robert James Edmondson, William Edwards, Bernard Philip Vincent Elsden, William Proudlock Errington, Ivor Parry Evans, Robert Arthur Feldman, LL.B. London, Donald Charles Campbell Ferrier, John Euston Bell Finlay, Edward Foulkes, Denis James Fountaine, B.A. Oxon, Philip Fox, LL.B. Manchester, Harry McKenzie Fraser, Kenneth Lovat Fraser, B.A., LL.B. Cantab., John Middleton Freeman, Robert Meredith Gamble, Saul Garelick, Lewis Gassman, Ernest Gerald Gateley, Eustace Stephenson Gillett, B.A. Oxon, Max Gillis, Harry Twine Gilpin, Charles John Goodship, Walter Frederick Goold, Leonard Gordon, James Graves, John Henry Green, Walford Scott Green, B.A. Cantab., Mabel Eileen Greenwood, Nancy Marion Hackwood, B.A. Cantab., Kaufman Haimovich, LL.B. London, Sydney Haworth, John Mason Haywood, LL.B. London, Desmond Heap, LL.B. Manchester, Samuel Alexander Heaton, Douglas William Maclagan Henderson, Ian Thomson Henderson, B.A. Oxon, William Richard Henson, LL.B. Birmingham, John Henwood-Jones, Bertram Carmichael Hobbs, John Kenneth Hood, B.A. Oxon, Frederick Ronald Horden, John Herbert Horne, Denis Arthur Sydenham Houghton, B.A. Oxon, Maurice Hudgell, Francis Gerard Hunt, Thomas Hunter, Thomas Reginald Ibbetson, Jack Glover Iggulden, Alfred Ingledew, Vivian Horswill Jackson, Lawrence Mason Jacob, Clement Wilfred Jarvis, LL.B. London, Charles Greenfield Jay, John Frederick Jay, Brinley Jenkins, Gordon Cotter Jennings, Edmund Trevor Merton Jones, B.A. Cantab., George Edwin Sibbering Jones, Solomon Kaufman, LL.M. London, Richard Herbert Kendal, B.A. Oxon, George Francis Nelson Kent, B.A. Cantab., Robert James Kent, LL.B. London, John Alexander Kerly, John Dunstan Kevill, Edward Kenneth King, B.A. Cantab., Richard Alan Kinnersly, B.A. Cantab., Stephen Bryan Kirby, James Norman Balliol Lainé, B.A. Oxon, Vernon Lawrence, Robert Edis Legat, Guy Leggatt, B.A. Cantab., Maurice Lesser, Leonard Mark Liell, Geoffrey Trevor Lloyd, Anthony Baruh Lousada, B.A. Oxon, Warren Edward Lovesy, Cyril Grant Maby, B.A. Oxon, John Joseph McAvoy, Raymond Arthur McKenzie, John Fortescue Mackeson, B.A. Cantab., Donald Macleod, Leslie John March, LL.B. London, Edwin Kenneth William Matthews, William Anthony Merriman, Stephen Fenwick Mill, Ralph Ommanney Moore, B.A. Oxon, Maxen Owen Morris, LL.B. Liverpool, Winston Phineas Moses, John Frank Musson, LL.B. Leeds, Ivor George Wilmott Newington, Charles Frederick Osborne Oliver, LL.B. Birmingham, Ronald Arthur Orchard, LL.B. London, Harold Owen, Humphrey Leslie Malcolm Oxley, Neville Frank Paddock, Frederick Gordon Partridge, Robert

Claude Pascoe, John Henry Payling, Henry Philip Abercrombie Peaty, Ernest Peck, John Richard Pedley, George Edward Maxwell Pennefather, B.A., LL.B. Cantab., Charles Oscar Perry, B.A. Cantab., Richard Gilmour Philipps, Geoffrey Phillippo, Dennis Wenceslas Picek, Harold Edwin Piffe-Phelps, Edward Whitfield Pigot, Eric James Pointon, Alfred Edwin Poole, James Derek Poole, Margaret Swale Poole, Stanley James Postlethwaite, B.A. Cantab., Geoffrey Frederic Powell, B.A. Oxon, Frederick John Oliver Prescott, B.A. Oxon, Guy George Morris Pritchett, Monteith Arthur Reece, Henry Charles Reed, Arnold Wilmot Rees, John Maurice Rees, LL.M. Sheffield, Claude Richardson, B.A. Oxon, Reginald Philip Flack Rickard, Henry Doig Angus Robertson, Richard Leonard William Rons, John Dunscome Rowland, Dudley Bridger Rubie, Christopher Alfred Ryves, Neville Nathan Saffer, B.A., LL.B. Cantab., Herbert Samuel Sargent, Frederic Stanley Scott, Herbert Edwin Scott, John Bernard Senior, Bernard Sharp, B.A. Oxon, LL.B. Sheffield, James Adamson Shaw, Herbert Walter Shibko, Henry Clifton Simmonds, Arthur John Slee, Malcolm Slowe, John Fellowes Smeaton, Ernest Smith, Gedaliah Sopher, Reginald Walter George Fitzgerald Stannus, B.A. Cantab., Maurice Rawson Stevenson, William John Stoffel, Ronald Helme Sutcliffe, Jack Charles Palmer Taylor, Vincent Meryn Taylor, B.A. Oxon, John Leighton Telford, Thomas Humphrey Thackrah, B.A. Oxon, Harry Stansfield Thistleton, LL.B. Manchester, Leslie Edward Thompson, William Gordon Thompstone, LL.B. Manchester, Ernest Geoffrey Thorne, Hubert Tisdall, Frank Dudley Todman, Edward George Soley Tomley, Sidney Turiansky, Kenneth Turner, Ernest Robson Underwood, Edward Thomas Verger, Oscar Godfrey Vorreuter, Eric James Waggott, David Anthony Wainright, Geoffrey Howard Walker, B.A., LL.B. Cantab., Robert Walsh, LL.B. Manchester, Charles Hodson Wareing, LL.B. Birmingham, John Compton Warner, B.A. Oxon, Joseph Weinstein, LL.B. London, Lawrence Eyre West, B.A. Oxon, Albert James Wheaton, Mary Ashwin White, LL.M. Sheffield, Elliott Henry Whitfield, John Manners Whitley, M.A. Cantab., Robert Davie Whittingham, B.A. Cantab., George James Kenneth Widgery, John Passmore Widgery, Edward Atkinson Williams, B.A. Oxon, Graham Wyatt Williams, B.A. Oxon, Norman Owen Williams, B.A. Oxon, Thomas Griffin Williams, Wilfrid Francis Williamson, David Wood, Tom Philip Woodbridge, Alfred Worthington, Emrys Wynne. Number of Candidates, 326; passed, 254.

The Council have awarded the following prize: To John Passmore Widgery, who served his Articles of Clerkship with Mr. Frederick Bullen Wyatt, of the firm of Messrs. Crosse, Wyatt, Vellacott & Willey, of South Molton, the John Mackrell Prize, value about £13.

Parliamentary News.

Progress of Bills.

House of Commons.

Expiring Laws Continuance Bill.
Read Second Time. [29th November.
London Passenger Transport (Re-Committed) Bill.
In Committee. [29th November.
Matrimonial Causes Bill.
Read First Time. [30th November.
Public Works Facilities Scheme (Huddersfield Corporation) Bill.
Read third Time. [30th November.

Questions to Ministers.

AUTUMN ASSIZES, NEWCASTLE.

Sir NICHOLAS GRATTAN-DOYLE asked the Attorney-General for how many days the autumn assizes at Newcastle-upon-Tyne lasted; during how many days the learned judge was sitting alone; during how many days the judge and the commissioner were sitting together; and during how many days the commissioner was sitting alone; and whether he is aware of the inconvenience and expense caused to litigants and others by the delay in the appointment of the commissioner of assize.

THE SOLICITOR-GENERAL (Sir Boyd-Merriman): The assizes lasted for fifteen days excluding commission day and Sundays. The judge sat alone on five days; he was assisted by a commissioner on four days; and a commissioner sat alone on six days. As regards the latter part of the question, I am informed that a commissioner was despatched as soon as the Lord Chancellor was satisfied as to the necessity of doing so. [28th November.

RENT RESTRICTIONS ACTS (AMENDING BILL).

Mr. LLOYD asked the Minister of Health whether, in view of the inclusion of the Rent and Mortgage Interest Restrictions Act in the Expiring Laws Continuance Bill, he proposes to introduce the Rent and Mortgage Interest Restrictions Amendment Bill at an early date: and whether the Bill will be proceeded with before Christmas.

Sir H. YOUNG: I am giving notice to-day of intention to introduce a Bill to amend the Rent Restrictions Acts, but I am not at present in a position to make any statement as to further proceedings. [30th November.

Societies.

Medico-Legal Society.

THE MEDICO-LEGAL SIGNIFICANCE OF IMPOTENCE.

The President, Lord Riddell, took the chair at a meeting of the Medico-Legal Society, on 24th November, when Dr. F. J. McCann read a paper on this subject.

Dr. McCann pointed out that to a medical man impotence meant the inability to perform the sexual act and to generate, but that in law sexual inability only need be proved. The court appointed two medical inspectors to examine the parties and considerable weight was attached to their report, but the potency of an uninjured and healthy male person was presumed in default of direct proof to the contrary, and a skilful advocate might effectively attack such evidence. Human function hardly admitted the word "impossible," and impotence was most difficult to prove. After discussing the purely medical aspects of the subject, Dr. McCann said that the issue in a nullity suit was whether one of the parties was incapable of consummating the marriage. Mere refusal was not sufficient; it must be persistent. Incapacity must have existed at the time of the marriage, and must not be remediable. Impotence was not the peculiar property of the male; many women married without telling their husbands that they had undergone mutilating operations, and a doctor, unless he was appealed to by one of the parties, had no right to disclose the fact.

Nullity suits might fail if the parties were not believed or collusion was suspected. The plea that the wife's health had been affected by the sexual incapacity of the husband must be substantiated by good medical evidence. Pre-nuptial agreement against congress was not valid unless there had been persistent refusal, and there must not be unreasonable delay in bringing the suit.

A short discussion followed.

ANNUAL DINNER

The Annual Dinner will be held at the Holborn Restaurant, London, W.C.1, on Friday, 9th December, at 7 for 7.15 p.m., when the President (The Right Honourable Lord Riddell) will be in the chair.

The Union Society of London.

A meeting of the Society was held at 8.15 p.m. in the Middle Temple Common Room on Wednesday, 30th November. The President (Mr. Alexander Ross) was in the chair, and there were thirteen members and one visitor present. Mr. Glanville Brown proposed "That the Lytton Report offers a solution of the Manchurian problem." Mr. E. J. Rendle opposed. There spoke in favour of the motion the President, Mr. Kenneth Ingram, the Hon. Secretary, and Mr. Coram; and against, Mr. G. Wagstaffe (a visitor), Captain Ellershaw and Mr. Henry Everett. The hon. proposer having exercised his right of reply, the House divided and the motion was carried by seven votes to three.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, 22nd November (chairman, Mr. R. Langley Mitchell), the subject for debate was "That the case of *In re British Trade Corporation, Ltd.* [1932] 2 Ch. 1, was wrongly decided." Mr. E. Maitland Woolf opened in the affirmative. Mr. R. D. C. Graham opened in the negative. Mr. T. M. Jessup seconded in the affirmative. Mr. J. H. Kidgell seconded in the negative. The following members also spoke: Messrs. L. J. Frost, P. W. Iliff, A. C. Dowling, and Miss H. M. Cross. The opener having replied, and the chairman having summed up, the motion was lost by two votes. These were fourteen members and one visitor present.

At a meeting of the Society held at The Law Society's Hall, on Tuesday, 29th November (Chairman, Miss H. M.

Cross), the subject for debate was: "That this House approves of the Government's foreign policy." Mr. J. M. Buckley opened in the affirmative and Mr. W. F. Bell opened in the negative. The following members also spoke: Messrs. D. H. McMullen, C. E. Lloyd, P. W. Iliff, W. M. Pleadwell, R. Langley Mitchell, C. Weinberg, L. J. Frost, W. L. F. Archer, and H. B. M. Falck. The opener having replied, the motion was carried by one vote. There were fourteen members and one visitor present.

The Hardwicke Society.

An Ordinary Meeting of the Society was held in the Middle Temple Common Room on Friday, 25th November. The President, Mr. Vyvyan Adams, M.P., took the chair at 8.15 p.m. In public business, Mr. Granville Sharp (ex-President) moved "That civilised man is not happier than the barbarian." Miss A. Notcutt opposed. There spoke to the motion Mr. Petrie, Miss Bright Ashford, Mr. Menzies, Mr. Crawford (ex-President), Mr. Mayers, Mr. Clarke, Mr. Suddards, Miss Moshkowitz, Mr. Cowper, Mr. Jardine Brown, Mr. Newman Hall, and the hon. proposer in reply. On a division the motion was lost by four votes.

University of London Law Society.

University of London Law Society, Mr. R. C. FitzGerald, LL.B., F.R.S.A., presiding, held a debate on Tuesday, 15th November, at London University, that "This House is of the opinion that the case of *McAlister* (*or Donoghue*) v. *Stevenson* (1932), 48 T.L.R. 496, was wrongly decided. Mr. T. J. F. Hobley argued in the affirmative that at common law there was no recognition of any relationship between the manufacturer of an article and a consumer, such as to support an action for negligence according to the facts proved in this case, which were not based on any contract between the parties.

Mr. F. C. Hales contended for the negative, and gave some appropriate citations of *dicta* to show, he submitted, that the decision of the court was correct.

Mr. Hobley, replying, held that such *dicta* were not applicable to the circumstances of the present case.

Those who took part in the discussion were Messrs. Wood, Fink, Daykin, Gower, Goodman and Miss Watson.

Voting for the affirmative, seven; for the negative, seventeen.

University of London Law Society held a Moot on the 29th November, at Gower-street, before Mr. J. E. Singleton, K.C., Recorder of Preston.

Mr. W. G. Williams and Mr. Furtado acted as counsel for the appellant, and Mr. F. E. C. Wood and Mr. I. Aaronson, for the respondent.

Mr. C. FitzGerald presided and was supported by Mr. Hobley, barrister-at-law, Miss Watson (hon. treasurer) and Mr. A. Goodman (hon. secretary).

Sir Morris Amos, Professor of Comparative Law at the London University, was among those present.

Chartered Institute of Secretaries.

Mr. F. R. E. Davis, President, took the chair at a dinner of this Institute held at Guildhall on 22nd November. After the loyal toasts had been honoured, Mr. W. G. Hislop proposed the health of "The Corporation of London." He spoke eloquently of the traditions enshrined by Guildhall, the walls of which still bore the mark of the Great Fire of London. The origin of the City was, he said, shrouded in the mists of antiquity; this year was the 741st consecutive year of the Lord Mayor's office, and Sir Percy Greenaway was the 610th Lord Mayor of whom record existed. Parliament itself was modelled on the Corporation, and sometimes would do well to adhere more closely to its prototype. The Corporation performed many valuable and almost unappreciated services to its citizens and thousands who lived outside its boundaries; it ensured a wholesome food supply by its rigorous maintenance of the highest standards in the great markets of Smithfield, Billingsgate and Leadenhall. Its educational activities, expressed in the City of London School, the Guildhall School of Music and Library, and the Gresham College, set a magnificent example. In welcoming many of its members by name, Mr. Hislop remarked that the Companies Act contained so many traps for the unwary, and so many provisions that the hard-working secretary found it difficult to apply, that he never knew when he might have to meet an alderman in his official capacity. He hoped that if he spoke appreciatively of them now, a wave of sympathy might pass through the mind of any one of them before whom he was charged and cause him to say "This is a conscientious man, I know; I will let him off with a caution."

The Lord Mayor, in reply, remarked that, as many of the gathering had heard several of his 609 predecessors respond to this same toast, he would spare them undue prolixity. He paid tribute to the manner in which the Institute upheld the status of company secretaries, and thereby fostered the confidence and stability which meant so much to the commerce of the City of London.

His Excellency the Brazilian Ambassador, Dr. Régis de Oliveira, recalled the early days when the voyagers of the City had spread its fame for energy, activity and honesty all over the world. The Institute and the companies which its members served did much to foster and strengthen the traditional relations of confidence and friendship that bound his country to Great Britain.

The President, when he rose to reply, was greeted with enthusiastic and prolonged applause. Tradition, he said, must under the changed conditions of modern commerce give way largely to expediency if this country were to surmount the difficulties that still confronted it. The formation of the National Government was an outstanding example of the new and unavoidable concessions that tradition had to make. The complexity of company business, and especially the development of the Companies Acts, had made it necessary to replace the old qualifications for secretaryship—connection with illustrious families—by knowledge and ability. For this reason the Institute endeavoured to inculcate in the minds of its members the ever-increasing value of developing personality, patience and tact. The secretary spent the greater part of his life equipping himself for the service of others with a loyalty that commanded respect. He was the real working man and knew no union except that indicated by the Institute's motto—"Ever watchful, with the assistance of the Crown."

Mr. F. Gurdon Palin proposed the health of "The Guests," suggesting that the experience of all the guests of secretaries in general would make an interesting symposium.

Sir Robert Horne, in reply, confessed on behalf of chairmen and directors in general that the whole business of successful companies was done by their secretaries, whose ripe inspiration and whose zealous and industrious activity led them up the steep pathway of effort to prosperity; but that when a company went down and disappeared it was always found that its chairman had stupidly endeavoured to take the direction into his own hands!

Warwickshire Law Society.

The President of The Law Society, Mr. C. E. Barry, was the chief guest at the annual dinner of the Warwickshire Law Society held on Friday, 18th November, at the Newdegate Arms Hotel, Nuneaton.

The chair was taken by the President, Mr. W. E. Lester. A number of distinguished guests were present, including Mr. J. F. Eales, K.C., M.P., Recorder of Coventry, The Mayor of Nuneaton, Mr. W. T. Smith, J.P., Mr. S. Vernon, President of the Birmingham Law Society, Mr. Roland Hollick, President-elect of the Warwickshire Law Society, Dr. P. G. Horsburgh, President of the Nuneaton Division of the British Medical Association, and Mr. R. A. Willes, Deputy Chairman of the Warwickshire Quarter Sessions.

The toast of "The Bench and the Bar" was proposed by the President of the Warwickshire Law Society and replied to by the Recorder of Coventry and Mr. R. A. Willes. The toast of "The Law Society and the Provincial Law Societies" was proposed by Dr. Horsburgh and replied to by the President of The Law Society, and the President of the Birmingham Law Society. Mr. W. A. Coleman proposed the toast of "Our Guests," which was replied to by the Mayor of Nuneaton and Mr. Douglas Jenkins.

Lancashire Chancery Bar.

The Vice-Chancellor's Dinner to the Lancashire Chancery Bar was held at Gray's Inn, of which the Vice-Chancellor is the treasurer, on 26th November.

The following guests were present: Sir Herbert Cunliffe, K.C. (Attorney-General of the Duchy of Lancaster), Mr. Hubert Winstanley, Mr. Louis F. Fergusson (clerk of the Council of the Duchy of Lancaster), Mr. Henry Cuningham, Mr. H. McMaster, Mr. A. H. Montgomery, Mr. Stuart Deacon, J.P., Mr. Harold E. Gardner, Mr. C. E. R. Abbott, Mr. Eliot A. C. Druce (Solicitor for the Affairs of the Duchy of Lancaster), Mr. Edward Ackroyd, Mr. John Bennett, Mr. R. W. Lowden, Mr. F. H. B. Hodgson, Mr. F. J. Kerr, Mr. Harold Roberts, Mr. Ernest Bolden, Mr. H. S. Barker, Mr. W. Lyon Blease, Mr. Hugh Gamon, Mr. B. B. Benas, Mr. H. P. Glover, J.P.,

Mr. W. R. Price, Mr. W. Taylor, Mr. C. L. J. Holt, Mr. Charles Gandy, Mr. C. J. Hemelryk, Mr. John M. Worthington, Mr. Harold Brown, Mr. Thomas Cunliffe, Mr. Allan Walmsley, Mr. George Maddocks, Mr. W. Geddes, Mr. P. Ingress Bell, Mr. R. A. Forrester, Mr. Humphrey C. Easton, Mr. J. J. Clarke.

In addition to Vice-Chancellor Sir Courthope Wilson (treasurer of Gray's Inn), the following Masters of the Bench of the Society were present: The Right Hon. Sir Dunbar Plunket Barton, Bart., K.C., Mr. Herbert F. Manisty, K.C., Mr. Edward Clayton, K.C., The Right Hon. Lord Atkin, The Right Hon. Sir William Byrne, K.C.V.O., C.B., Sir Montagu Sharpe, K.C., The Right Hon. Lord Justice Greer, His Honour Judge Ivor Bowen, K.C., The Right Hon. Lord Thankerton, Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, Mr. A. Andrewes Uthwatt, Mr. N. L. C. Macaskie, K.C., Mr. Harold Derbyshire, M.C., K.C., and Sir Albion Richardson, C.B.E., K.C., with Mr. D. W. Douthwaite (under-treasurer).

There were no set speeches, but Sir Herbert Cunliffe proposed the health of the Vice-Chancellor who very briefly replied. Part-songs were rendered by the Westminster Singers who occupied the old Minstrels' Gallery of the Hall.

Rules and Orders.

THE SOLICITORS' REMUNERATION ORDER, 1932, DATED OCTOBER 3, 1932,* VARYING THE REMUNERATION PRESCRIBED BY GENERAL ORDERS UNDER THE SOLICITORS' REMUNERATION ACT, 1881 (44 & 45 VICT. c. 44).

WE, the Right Honourable John Viscount Sankey, Lord High Chancellor of Great Britain, The Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, The Right Honourable Ernest Murray Baron Hanworth, Master of the Rolls, Charles Edward Barry, Esquire, President of the Law Society, and John Walter Robson, Esquire, President of the Manchester Law Society, being the persons authorised by Section 56 of the Solicitors Act, 1932(†) (in this Order called "the Act") do hereby by virtue of the powers vested in us by the Act and of every other power enabling us in that behalf order and direct as follows:—

1. The remuneration of a solicitor in respect of all business transacted after the 30th day of November, 1932, the remuneration for which is regulated by Clause 2 (*c*) of the General Order made under the Solicitors' Remuneration Act, 1881, which came into force on the 1st day of January, 1883, (in this Order called the Order of 1883),(‡) shall be increased by 20 per centum, and accordingly the said clause 2 (*c*), clause 6 of the Order, Rules 2, 5 and 10 of Schedule I Part I and Rules (1) and (4) of Schedule I Part 2 of the Order shall have effect as if after the words "as altered by Schedule II hereto" and "as altered by Schedule II" respectively there were added the words following, that is to say, "and as further altered by the addition of 20 per centum to every allowance or charge which might have been made under the said system as so altered."

2. The remuneration of a solicitor in respect of all business undertaken after the 30th day of November, 1932, the remuneration of which is regulated by paragraphs (*a*) and (*b*) of clause 2 of the Order of 1883 shall where the value of the transaction is £50,000 or less be increased by 20 per centum, provided that in respect of transactions in excess of £50,000 the amount chargeable shall be according to the scale allowed by the Order of 1883 or shall be reckoned as if the transaction were of the value of £50,000 whichever shall be the greater.

3. The Rules appended to Schedule I of the Order of 1883 as amended by any subsequent Order shall have effect as though the sums of £2, £5 and £3 mentioned in Rules 4 and 8 of Part I and the sum of £1 1*s.* 0*d.* mentioned in Rule 3 of Part II of that Schedule were increased by 20 per centum.

4.—(*a*) The Solicitors' Remuneration Act General Order, 1919,(§) is hereby revoked except in respect of business transacted before the 1st day of December, 1932.

(*b*) Rule 1 (*a*) and Rule 4 of the Solicitors' Remuneration Act General Order, 1925,(‖) are hereby revoked except in respect of business undertaken before the 1st day of December, 1932, and Rule 2 thereof shall be construed as if the words "as amended by any subsequent Order" were substituted for the words "as amended by this Order."

(*c*) The Solicitors' Remuneration (Manorial Incidents) Order, 1926,(¶) shall be read and have effect as if for references therein to the Solicitors' Remuneration Act General Order, 1919, and the Solicitors' Remuneration Act General Order, 1925, there were substituted references to this Order except in respect of business transacted or undertaken (respectively) before the 1st day of December, 1932.

5. This Order may be cited as the Solicitors' Remuneration Order, 1932.

Dated the 3rd day of October, 1932.

Sankey C. *Charles Edw. Barry.*
Hewart C.J. *J. Walter Robson.*
Hanworth M.R.

* This Order, having lain before both Houses of Parliament for one month in accordance with section 56 (4) of the Solicitors Act, 1932, came into operation on the 18th day of November, 1932.
† 22–3 G. 5. c. 37. ‡ *See* S.R. & O. Rev. 1904 XI, Solicitor E., p. 1.
§ S.R. & O. 1919 (No. 1878) II, p. 461. ‖ S.R. & O. 1925 (No. 755) p. 1440.
¶ S.R. & O. 1926 (No. 1071) p. 1227.

THE SOLICITORS' REMUNERATION (REGISTERED LAND) ORDER, 1932, DATED OCTOBER 3, 1932,* VARYING THE REMUNERATION PRESCRIBED BY THE SOLICITORS' REMUNERATION (REGISTERED LAND) ORDER, 1925.

We, The Right Honourable John Viscount Sankey, Lord High Chancellor of Great Britain, The Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, The Right Honourable Ernest Murray Baron Hanworth, Master of the Rolls, Charles Edward Barry, Esquire, President of the Law Society, John Walter Robson, Esquire, President of the Manchester Law Society and Sir John Stewart Stewart-Wallace, Chief Land Registrar, being the persons authorised by section 56 of the Solicitors Act, 1932,(†) do hereby by virtue of the power vested in us by the said Act and of every other power enabling us in that behalf, order and direct that:—

1. The Solicitors' Remuneration (Registered Land) Order, 1925,(‡) shall be read and have effect as if—

(*a*) in respect of business transacted after the 30th day of November, 1932, for the words "the Solicitors' Remuneration Act General Order, 1919"(§) there were substituted "the Solicitors' Remuneration Order, 1932"(‖) and

(*b*) in respect of business undertaken after the 30th day of November, 1932, for the words "the Solicitors' Remuneration Act General Order, 1925"(¶) and "33⅓ per centum" there were substituted "The Solicitors' Remuneration Order, 1932" and "20 per centum" respectively.

2. This Order may be cited as the Solicitors' Remuneration (Registered Land) Order, 1932.

Dated the 3rd day of October, 1932.

Sankey C. *Charles Edw. Barry.*
Hewart C.J. *J. Walter Robson.*
Hanworth M.R. *J. S. Stewart-Wallace,*
Chief Land Registrar.

* This Order, having lain before both Houses of Parliament for one month in accordance with section 56 (4) of the Solicitors Act, 1932, came into operation on the 18th day of November, 1932.
† 22–3 G. 5. c. 37. ‡ S.R. & O. 1926 (No. 2) p. 1224.
§ S.R. & O. 1919 (No. 1878) II, p. 461. ‖ S.R. & O. 1932, No. 940.
¶ S.R. & O. 1925 (No. 755) p. 1440.

THE COUNTY COURTS BANKRUPTCY AND COMPANIES JURISDICTION (LEEK AND STONE) ORDER, 1932. DATED 21ST NOVEMBER, 1932.

I, John Viscount Sankey, Lord High Chancellor of Great Britain by virtue of the powers vested in me by section 96 of the Bankruptcy Act, 1914,(*) section 163 of the Companies Act, 1929,(†) Rule 127 of the Bankruptcy Rules, 1915,(‡) and of all other powers enabling me in this behalf, do hereby order as follows:—

1. For the purpose of jurisdiction in bankruptcy and in proceedings under the Companies Act, 1929,—

(i) the district of the County Court of Staffordshire held at Leek shall cease to be attached to the County Court of Cheshire held at Macclesfield and shall be attached to the County Court of Staffordshire held at Hanley and Stoke-upon-Trent: and

(ii) the district of the County Court of Staffordshire held at Stone shall cease to be attached to the County Court of Staffordshire held at Stafford and shall be attached to the County Court of Staffordshire held at Hanley and Stoke-upon-Trent.

2. Nothing in this Order shall affect the jurisdiction of the County Court of Cheshire held at Macclesfield and the County Court of Staffordshire held at Stafford, to deal with matters pending in those Courts, respectively, on the 31st day of December, 1932.

3. This Order may be cited as the County Courts Bankruptcy and Companies Jurisdiction (Leek and Stone)

* 4–5 G. 5. c. 59. † 19–20 G. 5. c. 23. ‡ S.R. & O. 1914 (No. 1824) I, p. 41.

Order, 1932. and shall come into operation on the 1st day of January, 1933, and the County Courts (Bankruptcy and Companies Winding-Up) Jurisdiction Order, 1899,(§) as amended, shall have effect as further amended by this Order.

Dated the 21st day of November, 1932.

Sankey, C.

§S.R. & O. Rev. 1904, III, County Court, E., p. 78 (1899, No. 351).

THE COUNTY COURT (No. 3) RULES, 1932. DATED NOVEMBER 16, 1932.

1. These Rules may be cited as the County Court (No. 3) Rules, 1932, and shall be read and construed with the County Court Rules, 1903,* as amended.

An Order and Rule referred to by number in these Rules means the Order and Rule so numbered in the County Court Rules, 1903, as amended.

The Appendix referred to in these Rules is the Appendix to the County Court Rules, 1903, as amended.

A Form referred to by number in these Rules means the Form so numbered in Part I of the Appendix to the County Court Rules, 1903, as amended.

The County Court Rules, 1903, as amended, shall have effect as further amended by these Rules.

2. In Rule 1 of Order II the words "except where such absence shall be allowed for reasonable cause by the Judge" shall be inserted after the word "Court" where that word first occurs.

3. Rules 13 to 28, both inclusive, of Order XLII are hereby revoked.

4. At the end of Rule 4 of Order XLIX the following words shall be added :—

"together with an undertaking to pay the Probate Registry fee required on the production of the documents referred to in Rule 7 of this Order."

5. The following Rule shall be inserted after Rule 62 in Order L and shall stand as Rule 63 :—

"*Chancel Repairs Act*, 1932.

63.—(1) *Notice to repair. Form* 490.]—A notice under section 2 of the Chancel Repairs Act, 1932,(†) hereafter in this Rule referred to as a 'notice to repair') shall be in accordance with the Form in the Appendix.

(2) *Service of notice to repair.*]—A notice to repair may be served in accordance with the provisions of Rule 2 of Order LIV; provided that if such a notice is sent by post it shall be sent by registered post.

(3) *Proceedings to be by action.*]—Proceedings under section 2 of the Chancel Repairs Act, 1932, to recover the sum required to put the chancel in repair shall be by action commenced by plaint and ordinary summons.

The action shall be intituled 'in the matter of the Chancel Repairs Act, 1932.' The parochial church council of the parish in which the chancel is situate, or in a case where there is no such council the incumbent and church wardens of the parish, shall be the plaintiffs and the person alleged to be liable to repair the chancel shall be the defendant.

(4) *By whom a responsible authority may act and service upon responsible authority.*]—A parochial church council may act by its secretary and an incumbent and church wardens may act by the incumbent for the purpose of signing any document or swearing any affidavit, and any notice summons order or warrant directed to a parochial church council shall be sufficiently served or delivered, if served on or delivered to the secretary to such council and any notice summons order or warrant directed to the incumbent and church wardens of a parish shall be sufficiently served or delivered if served on or delivered to the incumbent.

(5) Subject to the provisions of the Chancel Repairs Act, 1932, and of this Rule the action shall proceed according to the Rules and practice prevailing in the County Court.

(6) Where a responsible authority desires to bring proceedings under section 2 (2) of the Chancel Repairs Act, 1932, before the expiration of one month from the date when the notice to repair was served, the responsible authority may at any time after the service of such notice to repair file an application for leave so to bring proceedings, and may apply to the Court upon affidavit stating the date when the notice to repair was served and the facts rendering proceedings immediately necessary and that no sufficient measures are being taken to put the chancel in proper repair; and the Court may upon such application make such order and upon such terms as may be just.

(7) *Security for Costs. S.* 3 (4) *of Act.*]—A defendant in any proceedings by a responsible authority under the Chancel Repairs Act, 1932, may at any time not less than seven clear days before the return day of the summons make an application to the registrar for an order directing the responsible authority to deposit in Court a sum of money as security for the costs of the defendant.

The application shall be in writing and shall be filed with the registrar by post or otherwise and shall be accompanied by an affidavit stating that the defendant intends to defend the action and has a good defence thereto on the merits and stating shortly the grounds of his defence, and the provisions of Rule 9 paragraphs (3) (4) (5) (6) and (7) of Order XII *mutatis mutandis* shall apply to such applications.

(8) *Payments into Court of sum for which judgment given. See Order IX rule* 24. *S.* 3 (4) *of Act.*]—In any proceedings under the Chancel Repairs Act, 1932, in which judgment is given for the payment of a sum of money in respect of repairs not yet executed the sum for which judgment is so given shall, unless the Judge shall otherwise direct, be paid into Court to the credit of an account intituled in the action, and any sum so paid into Court may be invested or be paid from time to time out of Court to such person as the Judge may direct, and Rule 25 of Order IX shall apply with regard to such moneys.

Nothing in this paragraph shall prejudice the lien of a solicitor for costs.

(9) *Definitions.*]—In this Rule the expressions 'chancel' 'responsible authority' and 'parochial church council' have the meanings respectively assigned to them by the Chancel Repairs Act, 1932."

6. In Form 8A the expression "Order V., Rule 13 (9)" shall be substituted for the expression "Order V., Rule 13 (16)."

7. In Forms 207, 208 and 210 the words "The hearing fee must be paid before the case is called on" shall be omitted.

8. In Part I of the Appendix there shall be inserted the following new form which shall stand as Form 490 :—

"490

The Chancel Repairs Act, 1932.

Notice to repair under Section 2.

[*Not to be printed.*]

Whereas the chancel of
situate in the parish of
is in need of repair to the extent set out in the particulars appended to this notice.

And whereas it appears to the Parochial Church Council of the said parish of
[*or* the incumbent and church wardens of the said parish of] the responsible authority within the meaning of the Chancel Repairs Act, 1932, that you are liable to repair the said chancel on the grounds following that is to say :—

(*State in general terms the grounds on which the person to whom the notice is addressed is alleged to be liable to repair the chancel.*)

Take notice that the said Parochial Church Council of the said parish of
[*or* the said incumbent and church wardens of the said parish of] hereby call upon you to put the said Chancel in proper repair.

Particulars of extent of disrepair.

Dated this day of 19 .

A.B. Secretary to the Parochial Church Council [*or* incumbent] of the parish of

To [the person alleged to be liable to repair the chancel]."

We, the undersigned persons appointed by the Lord Chancellor pursuant to section one hundred and sixty-four of the County Courts Act, 1888,(‡) and section twenty-four of the County Courts Act, 1919,(§) to frame Rules and Orders regulating the practice of the Court and forms of proceedings therein, having by virtue of the powers vested in us in this behalf framed the foregoing Rules, do hereby certify the same under our hands and submit them to the Lord Chancellor accordingly.

S. A. Hill Kelly. *H. Bensley Wells.*
T. Mordaunt Snagge. *A. O. Jennings.*
C. E. Dyer.

Approved by the Rules Committee of the Supreme Court.

Claud Schuster,
Secretary.

I allow these Rules, which shall come into force on the 1st day of January, 1933.

Dated the 16th day of November, 1932.

Sankey, C.

‡ 51-2 V.c. 43. § 9-10 G. 5. c. 73.

Mr. John Phillips Mead, solicitor, of Teddington, and King's Bench Walk, left £23,724, with net personalty £13,111.

* S.R. & O. Rev. 1904, III County Court, E. p. 89 (1903, No. 629).
† 22-3 G. 5. c. 20.

Legal Notes and News.

Honours and Appointments.

The Secretary to the Ministry of Transport announces that Mr. BRUCE THOMAS, K.C., has been appointed President of the Railway Rates Tribunal in succession to Sir Walter B. Clode, K.C., who has retired.

The Inner Temple announces that Sir WILLIAM HANSELL, K.C., has been elected Treasurer for the year 1933; Mr. HOWARD WRIGHT has been elected Reader for the Lent Vacation; and Mr. S. L. PORTER, K.C., has been elected a Master of the Bench of the Inner Temple.

Mr. C. F. LOWENTHAL, K.C., has been elected Treasurer of the Middle Temple for the year 1933.

Sir WALTER GREAVES-LORD, K.C., M.P., Recorder of Manchester, has been elected Treasurer of Gray's Inn for the year 1933, in succession to The Hon. Sir COURTHOPE WILSON, Vice-Chancellor of the County Palatine of Lancaster, who has been elected Vice-Treasurer for the same period.

Professional Announcements.

(2s. per line.)

STUCKEY, CARR & CO., of 4 Pavilion Parade, Brighton, and Storrington, announce that they have taken into partnership Mr. ARTHUR TAYLOR (practising as Arthur Taylor and Co., at Maxwell House, 11, Arundel-street, Strand, W.C.2). The style of the firm will remain unchanged. Mr. Taylor will also continue to practise at 11, Arundel-street, Strand, W.C.2, as heretofore.

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

EXPIRING LAWS.

RENT RESTRICTION ACT TO CONTINUE A YEAR.

A bill to continue expiring laws, introduced by Mr. Hore-Belisha, provides for the continuance of the following until 31st December, 1933, with the Acts amending or affecting them:—

Wireless Telegraphy Act, 1904 (whole Act); Coal Mines (Minimum Wage) Act, 1912 (whole Act); Aliens Restriction (Amendment) Act, 1919 (s. 1); Land Settlement (Scotland) Act, 1919 (s. 2); Harbours, Docks and Piers (Temporary Increase of Charges) Act, 1920 (whole Act); Ministry of Food (Continuance) Act, 1920 (so far as it authorises the making or revoking, in whole or in part, of Pt. III of the Sale of Food Order, 1921, and provides for the enforcement and imposes penalties for the breach thereof); Unemployment (Relief Works) Act, 1920 (whole Act); Employment of Women, Young Persons and Children Act, 1920 (s. 2); Dyestuffs (Import Regulation) Act, 1920 (whole Act); Poor Law Emergency Provisions (Scotland) Act, 1921 (whole Act except sub-s. (4) of s. 2); London Traffic Act, 1924 (whole Act); Mining Industry Act, 1926 (s. 18); Poor Law Emergency Provisions (Scotland) Act, 1927 (ss. 1, 3 and 5); Public Works Facilities Act, 1930 (whole Act).

The following to be continued until 25th December, 1933, in England, and to 28th May, 1934, in Scotland:—

Increase of Rent and Mortgage Interest (Restriction) Act, 1920 (whole Act).

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness	MR. JUSTICE MAUGHAM. Witness, Part II.
M'nd'y Dec. 5	Mr. Hicks Beach	Mr. Ritchie	Mr. Jones	Mr.*Hicks Beach
Tuesday .. 6	Andrews	Blaker	Hicks Beach	Blaker
Wednesday 7	Jones	More	Blaker	*Jones
Thursday .. 8	Ritchie	Hicks Beach	Jones	Hicks Beach
Friday 9	Blaker	Andrews	Hicks Beach	*Blaker
Saturday .. 10	More	Jones	Blaker	Jones

DATE.	GROUP I. MR. JUSTICE BENNETT. Witness Part I.	MR. JUSTICE CLAUSON. Witness Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
M.nd.y Dec. 5	Mr.*Blaker	Mr Ritchie	Mr.*Andrews	Mr. More
Tuesday .. 6	*Jones	*Andrews	*More	Ritchie
Wednesday 7	*Hicks Beach	More	*Ritchie	Andrews
Thursday .. 8	*Blaker	*Ritchie	Andrews	More
Friday 9	Jones	Andrews	*More	Ritchie
Saturday .. 10	Hicks Beach	More	Ritchie	Andrews

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 8th December, 1932.

	Middle Price 30 Nov. 1932.	Flat Interest Yield.	†Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	106½	3 15 1	3 11 10
Consols 2½%	74½	3 7 1	—
War Loan 3½% 1952 or after	98	3 11 5	—
Funding 4% Loan 1960-90	107½	3 14 5	3 11 3
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	107	3 14 9	3 12 4
Conversion 5% Loan 1944-64	114	4 7 9	3 9 0
Conversion 4½% Loan 1940-44	108xd	4 3 4	3 5 5
Conversion 3½% Loan 1961 or after	98½	3 11 1	—
Local Loans 3% Stock 1912 or after	87	3 9 0	—
Bank Stock	320	3 15 0	—
India 4½% 1950-55	105	4 5 9	4 1 9
India 3½% 1931 or after	85	4 2 4	—
India 3% 1948 or after	74	4 1 1	—
Sudan 4½% 1939-73	107	4 4 1	3 3 10
Sudan 4% 1974 Redeemable in part after 1950	107	3 14 9	3 9 6
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100	3 0 0	3 0 0
Colonial Securities.			
*Canada 3% 1938	101	2 19 5	2 15 11
*Cape of Good Hope 4% 1916-36	102	3 18 5	—
Cape of Good Hope 3½% 1929-49	98	3 11 5	3 13 2
††Ceylon 5% 1960-70	117	4 5 6	3 19 4
*Commonwealth of Australia 5% 1945-75	103	4 17 1	4 13 9
Gold Coast 4½% 1956	107	4 4 1	4 0 6
*Jamaica 4½% 1941-71	104	4 6 6	3 18 10
*Natal 4% 1937	102	3 18 5	3 10 2
*New South Wales 4½% 1935-45	99	4 10 11	4 12 1
*New South Wales 5% 1945-65	101	4 19 0	4 17 10
*New Zealand 4½% 1945	102	4 8 3	4 5 7
*New Zealand 5% 1946	106	4 14 4	4 7 9
Nigeria 5% 1950-60	112	4 9 3	4 0 2
*Queensland 5% 1940-60	100	5 0 0	5 0 0
*South Africa 5% 1945-75	110	4 10 11	4 0 0
*South Australia 5% 1945-75	103	4 17 1	4 13 9
*Tasmania 5% 1945-75	103	4 17 1	4 13 9
*Victoria 5% 1945-75	103	4 17 1	4 13 9
*West Australia 5% 1945-75	103	4 17 1	4 13 9
Corporation Stocks.			
Birmingham 3% 1947 or after	84½	3 11 0	—
*Birmingham 5% 1946-56	113	4 8 6	3 15 8
*Cardiff 5% 1945-65	109	4 11 9	4 1 10
Croydon 3% 1940-60	93	3 4 6	3 8 0
*Hastings 5% 1947-67	112	4 9 3	3 17 6
Hull 3½% 1925-55	97½	3 11 10	3 13 4
Liverpool 3½% Redeemable by agreement with holders or by purchase	97½	3 11 10	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	73½	3 8 0	—
London County 3% Consolidated Stock after 1920 at option of Corporation	86	3 9 9	—
Manchester 3% 1941 or after	84½	3 11 0	—
Metropolitan Water Board 3% "A" 1963-2003	86	3 9 9	3 10 10
Do. do. 3% "B" 1934-2003	88	3 8 2	3 9 1
*Middlesex C.C. 3½% 1927-47	99	3 10 8	3 11 10
Do. do. 4½% 1950-70	109½	4 2 2	3 15 3
Nottingham 3% Irredeemable	83	3 12 3	—
*Stockton 5% 1946-66	111½	4 9 8	3 18 5
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	98½	4 1 3	—
Gt. Western Rly. 5% Rent Charge	113	4 8 6	—
Gt. Western Rly. 5% Preference	72½	6 18 0	—
L. Mid. & Scot. Rly. 4% Debenture	90½	4 8 5	—
L. Mid. & Scot. Rly. 4% Guaranteed	75½	5 6 0	—
Southern Rly. 4% Debenture	95½	4 3 9	—
Southern Rly. 5% Guaranteed	101½	4 18 6	—
Southern Rly. 5% Preference	66½	7 10 4	—
‡L. & N.E. Rly. 4% Debenture	80½	4 19 5	—
‡L. & N.E. Rly. 4% 1st Guaranteed	60½	6 12 3	—

*Not available to Trustees over par. ††Not available to Trustees over 115.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.